COURTS:
DOCKET FEES AND USE OF: Circuit court, in absence of statutes authorizing same, may not make a rule requiring that a portion of the filing fee be used for maintaining the library of the court.

September 30, 1939

10-3 FILE 38

Mr. Frank W. Hayes
Prosecuting Attorney
Pettis County
Sedalia, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you request an opinion on the following:

> "Will you please, therefore, advise us whether in your opinion the Circuit Judge, under his power to fix the filing fee and make rules governing his court, would have the power to designate that a portion of the filing fee might be used for the purpose of maintaining a library for the use of its court, its officers and the local bar, or whether it would be necessary to have similar legislation passed as is referred to above."

We take it from your request that the court proposes to make an order providing for an additional amount of deposit for costs in each case filed and then require that a part of this deposit be used for the upkeep of the court library.

The deposit has been treated as costs of the suit. If this plaintiff prevails in the action, the deposit is returned to him, but if he loses, then it is applied in payment of the costs.

In the case of The City of St. Louis v. Meintz et al., 107 Mo. 611, 615, the Supreme Court, in discussing costs and fees and when the same may be taxed, said:

> "* * * The word costs, when used in relation to the expenses of legal preceedings, means the sum prescribed by law as charges for the services enumerated in the fee bill. Apperson v. Ins. Co., 38 N. J. L. 389. As between a party to a suit and the officer or witness, the charges allowed are usually denominated fees; but as between the parties to the suit these charges are usually called costs. Thus our statute makes it the duty of the clerk of the court to subscribe all bills of costs agreeably to fees which shall be allowed by law. R. S. 1889, sec. 2940. Costs are creatures of the statute, and can only be allowed and taxed when and in the amount authorized by statute. * * * * * * * * * * * * * * "

In the case of Shed v. Kansas City, St. Joseph & Council Bluffs Railroad Company, 67 Mo. 687, 690, the court said:

> "* * * The rule is that all statutes in reference to costs must be construed strictly, and that an officer cannot legally claim remuneration unless the state has expressly conferred the right. * * * * * * * * * * "

While the amount of the deposit which the court proposes to be set aside for the library may not be termed strictly as costs or fees, yet insofar as the litigants are concerned it is costs to them in connection with the suit. If it is cost to them, then we think the rule announced in Shed v. Kansas City, St. Joseph & Council Bluffs Railroad Company, supra, should be applied.

Your letter indicates that such an order might be made by the court by virtue of its powers to make rules governing the court, and you refer to the Supreme Court requiring a docket fee for each case. We have inquired of the Clerk of the Supreme Court and find that

none of that docket fee is set aside for the library. By referring to the appropriations, you will find that the appropriation of the Sixtieth General Assembly, Laws of Missouri, 1939, page 48, provided Fifteen Thousand Dollars ($15,000.00) for books and supplies for the court and library, so none of the docket fee is used for the library.

You refer in your letter to the Acts of 1935 and 1937, which authorized a part of the deposit to be used for the library. It is significant that the lawmakers, by the Act of 1935, page 221, provided for an additional One Dollar ($1.00) for the costs of a suit which was to be used for the maintenance of the library. This act applied to Buchanan County. The Act of 1937, Laws of Missouri, 1937, page 219, made the same provisions for a deposit for the library in Jasper County. Because of the fact that these two acts have been passed, it seems that the authority to require such deposit could be acquired only from the Legislature. The lawmakers, in these acts, have made it possible for this additional deposit to be made in each case and used for the library by terming such deposit as costs of the case. Following the rule which is recognized by the foregoing statute, it does not appear to us that a court would have authority to make a rule requiring such deposits. However, the courts have inherent powers to make some rules. In Volume 15 C. J., page 901, Section 276, the rule is stated as follows:

> "While courts are very generally authorized by statute to make their own rules for the regulation of their practice and the conduct of their business, a court has, even in the absence of any statutory provision or regulation in reference thereto, inherent power to make such rules. This power is, however, not absolute but subject to limitations based on reasonableness and conformity to constitutional and statutory provisions. Thus a court cannot make and enforce rules which are arbitrary, or unreasonable, or uncertain

> in their operation, which deprive a party of his legal rights, or which contravene any constitutional or statutory provision or principles of general law.
>
> "It is sometimes required by statute that the judges of courts of coordinate jurisdiction throughout the state shall meet at certain intervals to establish uniform rules.
>
> "Special rules for particular cases may sometimes, under statutory authority, be made when justice so requires, although the effect may be to exempt such cases from the operation of the ordinary rules of court. But on the other hand, it has been held that courts have not inherent power to extend an existing practice to meet a particular situation or to create a new procedure without legislation."

At page 904, Section 278 of Volume 15 C. J., on the question of matters subject to regulation by court rules, the rule is stated as follows:

> "Only such matters as are not regulated by general or special laws in reference to practice and procedure may be regulated by a rule of court. * * "

We hardly think that a rule of court requring a litigant to pay for the library which is used by the court would come within the class of rules permitted by the foregoing rule stated in 15 C. J.

Since the lawmakers, by the Acts of 1935 and 1937, supra, have attempted to regulate this branch of the procedure in certain counties, then we think it has been generally recognized that the power to make such rules is only acquired from the Legislature.

CONCLUSION.

From the foregoing it is the opinion of this department that the circuit judge would not be empowered to designate that a portion of the filing fee deposited as costs in a suit in his court could be used for the purpose of maintaining a library for the use of that court, its officers, and the local bar without legislation authorizing the same.

Respectfully submitted

TYRE W. BUTTON
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General

TWB:DA