

CIRCUIT COURTS:
FEES AND SALARIES:

Circuit Judge entitled to change of venue
fee earned under Section 1074, R.S. Mo.
1939, but not paid to the circuit judge
prior to the effective date of S.C.S.S.B.
No. 442.

*27 J. Holmes
27 J. Smith*

December 3, 1946

FILED
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Honorable Dimmitt Hoffman
Judge 30th Judicial Circuit
Sedalia, Missouri

Dear Judge Hoffman:

This will acknowledge receipt of your recent request
for an opinion, which reads:

"I should like an opinion from you relative
to change of venue fees for Judges of the
Circuit Courts.

"In this 30th Judicial Circuit the Clerk has
in his possession a considerable number of
fees sent to him as change of venue fees in
certain civil cases. The cases for which the
fees were sent him may be classed into four
groups:

"Group 1; 24 cases filed December 6, 1944.

"Group 2; 15 cases filed July 12, 1946

"Group 3; 2 cases filed July 22, 1946.

"Group 4; 1 case filed Nov. 18, 1946.

"Three cases from Group No. 1 have been tried
and appeals are pending in the Kansas City
Court of Appeals. As I understand it the
provisions of the present (New) Constitution
became effective March 30, 1945. Also the
provisions of the present salary law (Senate
Bill 442) became effective October 6, 1946.

"I should appreciate your opinion as to just
what fees of the above mentioned the Circuit
Judge of the 30th Judicial Circuit is entitled."

We believe there can be no question as to the dates when
the Constitution of Missouri of 1945 and Senate Committee
Substitute for Senate Bill No. 442 became effective, and that

the dates mentioned in your request are apparently correct. The Constitutional Convention in submitting the proposed Constitution required the voters to pass on said proposal on Tuesday, February 27, 1945. (See last paragraph of Schedule, Constitution of 1945). Section 3(c), Article XII, Constitution of 1945, provides that the proposed Constitution submitted to the voters, if adopted, shall take effect thirty days after the election.

S.C.S.S.B. No. 442 was passed by both houses of the 63rd General Assembly prior to July 8, 1946, at which time the General Assembly recessed, and under a joint resolution adopted by said General Assembly prior to said recess conforming with Section 29, Article III, Constitution of 1945, said bill became effective ninety days after the date of recess, which date caused said bill to become effective on October 6, 1946.

S.C.S.S.B. No. 442, supra, requires the salary of circuit judges in circuits similar to the 30th Judicial Circuit to be paid by the state from the state treasury. Section 2 of said bill reads in part:

"* * * * and all other judges of the circuit courts of this State shall each receive an annual salary of \$6,000.00 payable by the State out of the State treasury."

Section 24, Article V, Constitution of 1945, provides that all judges shall receive as salary the present compensation until changed by law. Said section reads in part:

"All judges shall receive as salary the total amount of their present compensation until otherwise provided by law, but no judge's salary shall be diminished during his term of office. * * * * *
The fee of all courts, judges and magistrates shall be paid monthly into the state treasury or to the county paying their salaries."

The salary of such circuit judges as yourself was not changed until S.C.S.S.B. No. 442 became effective on October 6, 1946. The courts in this state have uniformly held that a public officer is entitled to fees earned in his office, even though said fees are not collected until after the expiration of his term of office, provided such fees do not result in said officer's receiving a maximum salary in excess of that provided under the statutes and

Constitution of the State of Missouri. See Smith v. Pettis County, 136 S.W. (2d) 282; Lycett v. Wolff, 45 Mo. App. 489; and Corbin v. Adair County, 171 Mo. 385.

In Group 1 you mention the fact three cases in said group have been tried and are now pending on appeal, you do not indicate if the balance of cases in Group 1 and those in other groups have been tried. Section 1074, R.S. Mo. 1939, specifically provides that change of venue fee shall be paid to the judge trying the case after a trial had or upon final disposition of such cause in said court. In State v. Neal, 169 S.W. (2d) 686, 693, 350 Mo. 1002, the court, in holding the word "trial" includes all those steps in the trial during which the defendant may be of assistance to his counsel in conducting the proceedings, said: (l.c. 692)

"Section 1098, R.S. 1939, Mo. F.S.A. Sec. 1098, in our Civil Code defines a trial as 'the judicial examination of the issues between the parties, whether they be issues of law or of fact.' * * * * *

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"* * * Thus State v. Braunschweig, 36 Mo. 397, 399, said: 'Trial is the examination of a cause, civil or criminal, before a judge who has jurisdiction of it, according to the laws of the land.' And State v. Brown, 63 Mo. 439, 444, used the exact definition found in the civil statute. * * * * *

In State v. Brady, 137 F. (2d) 806, 213, 156 Kan. 351, the court defined "trial" as follows:

"* * * Unless a different meaning is imparted by the context or indicated by the particular matter to which it relates the word 'trial' means--under broad definition generally recognized--the judicial examination and decision of matters at issue before a competent tribunal. 64 S.J. 32. * * * * *

In State ex rel. Conner v. Pritchard, 54 N.E. (2d) 283, l.c. 285, the court defined "trial" as follows:

"A trial includes all steps taken in a cause from the time it is submitted for trial until the rendition of final payment."

The courts in this state have held that the circuit courts have no longer jurisdiction after allowing an appeal. In *In Re Grading Bledsoe Hill v. Bledsoe*, 222 Mo. 604, l.c. 609, the court said:

"There is much force in this contention, for it is now the accepted doctrine in this State, under our general practice act, that after an appeal has been taken in the circuit court by the filing of the proper affidavit and an order allowing the appeal to the appellate court, the cause is regarded as pending in the appellate court, although the transcript has not been filed in the appellate court, and the circuit court has no authority to take any further steps in the cause save and except to perfect and correct its own records so as to make them speak the absolute truth of what transpired in said court. * * * * *

Also see *Goedecke v. Zurich General Accident & Liability Ins. Co.*, 7 S.W. (2d) 309, l.c. 311.

In view of the foregoing definitions of the word "trial" and decisions holding the circuit court has no jurisdiction of a cause after allowing an appeal, unquestionably you, as circuit judge, are entitled to change of venue fees in cases heard by you wherein judgments were rendered or said causes were disposed of prior to October 6, 1946, the date on which S.C.S.S.B. No. 442 became a law. Likewise, if any cause is in your court on a change of venue wherein an appeal has been taken, whether pending or disposed of, if said appeal was taken prior to October 6, 1946, then you are entitled to the change of venue fee.

CONCLUSION

Therefore, it is the opinion of this department that you are entitled to receive all change of venue fees on cases heard or disposed of by you prior to October 6, 1946. Specifically answering your request, you are entitled to a change of venue fee on all cases in groups 1, 2 and 3 wherein judgment was rendered or said cases were disposed of prior to October 6, 1946, regardless of whether appeals were taken in such cases. However, you are not entitled to a change of venue fee in the

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one case filed in your court under group 4 for the reason
it was filed after the effective date of said bill, October
6, 1946.

Respectfully submitted,

AUBREY R. HAYMETS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

AED:ER