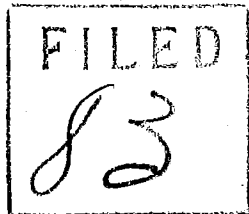


CIRCUIT COURTS: Final disposition of change of venue
SALARIES AND FEES: fee under Section 1074, R.S. Mo. 1939.



December 5, 1946

12/19

Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your request under date of December 3, 1946, which reads:

"To request your official opinion as to what disposition should be made of the ten dollars received by a circuit clerk in cases of change as provided by Section 1074 R.S. Mo., 1939, since Senate Committee Substitute Senate Bill No. 442 enacted by the 63rd General Assembly became effective."

This department recently ruled that under Senate Committee Substitute for Senate Bill No. 442 circuit judges are no longer entitled to receive the \$10.00 change of venue fee provided for in Section 1074, R.S. Mo. 1939. However, said bill did not repeal that part of Section 1074, supra, which requires litigants filing applications for change of venue to also file the \$10.00 fee with the clerk of the circuit court.

Section 24, Article V, Constitution of Missouri of 1945, requires fees of judges to be paid monthly into either the state treasury or the county that pays the salaries. Said provision reads in part;

"* * * The fee of all courts, judges and magistrates shall be paid monthly into the state treasury or to the county paying their salaries."

The foregoing constitutional provision is unquestionably self-executing, and, therefore, needs no legislation to carry it into effect. It is well established that constitutional provisions are self-executing when there is a manifest intention that they should go into immediate effect. In State ex rel. City

of *Fulton v. Smith*, 194 S.W. (2d) 302, l.c. 304, the court said:

"We are of the opinion that the mooted constitutional provision, the text of which is set forth in the margin, is not subject to the foregoing construction. One of the recognized rules is that a constitutional provision is not self-executing when it merely lays down general principles, but that it is self-executing if it supplies a sufficient rule by means of which the right which it grants may be enjoyed and protected, or the duty which it imposes may be enforced, without the aid of a legislative enactment. * * *

Another way of stating this general, governing principle is that a constitutional provision is self-executing if there is nothing to be done by the legislature to put it in operation. In other words, it must be regarded as self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the Constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action.' 11 Am. Jur., Constitutional Law, Section 74, pp. 691, 692. See, also, 16 C.J.S., Constitutional Law, Section 48, pp. 98-101. * * * * *

The salaries of circuit judges under S.C.S.S.B. No. 442 vary according to the number of counties in the judicial circuit and population. In some instances the salary is required to be paid solely out of the state treasury, and in other instances part of the salary is required to be paid out of the state treasury and balance out of the county or city composing said circuit. Sections 2 and 3 of S.C.S.S.B. No. 442 read:

"From and after the effective date of this Act, each judge of the circuit court of a judicial circuit composed of a single county or city which now has or may hereafter have more than 200,000 inhabitants, shall receive an annual salary of \$9,000.00, \$6,000.00 of which shall be paid by the state out of the

state treasury and \$3,000.00 by the county or city composing said circuit; each judge of the circuit court of a judicial circuit composed of a single county which now has or may hereafter have more than 85,000 inhabitants and less than 200,000 inhabitants, shall receive an annual salary of \$7,200.00, \$6,000.00 of which shall be paid by the state out of the state treasury and \$1,200.00 by the county composing said circuit; 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.

"From and after the effective date of this Act, the judge of the Cape Girardeau Court of Common Pleas shall receive an annual salary of \$5,000.00, said salary to be paid in equal monthly installments on the first day of each month, out of the State treasury."

We think there can be no question but that the \$10.00 change of venue fee provided for under Section 1074, R.S. Mo. 1939, is either a fee of the court or circuit judge. At least the Constitutional Convention was of this opinion as can be seen from the constitutional debates. Judge Williams, a member of the Constitutional Convention from Springfield, Missouri, offered an amendment to exempt change of venue fees by inserting the words "except change of venue fees of circuit judges" after the word "magistrates" in Section 24, Article V, Constitution, 1945. The discussion on this additional amendment of Judge Williams, which was defeated, commences on Page 2755 of the transcript of the debates of the Constitutional Convention and continues through Page 2760, and reads in part as follows:

"At page 2757, Mr. Righter, in opposing the amendment of Judge Williams, stated:

"This, Mr. President, this amendment of Judge Williams is a small thing in itself, and yet the members will see, from having read Section 24, that we are endeavoring, and the substitute is the same as the original section adopted by the Committee in this regard, that we are attempting to do away with the fee system in the courts and have a judge paid an adequate salary

for his services as judge and nothing but his services as a judge, and make that sufficient to properly sustain the office.'

"Mr. Righter, after pointing out abuses of the fee system in the probate courts and the justice of the peace courts, urged that no exception be made for these change of venue fees, stating:

"* * Well, the Legislature compensates him and under this section, will compensate him for being a full time circuit judge, devote his time to the trial of such cases as according to the due processes of the law come before him. Now, why should he in the entire system of courts, be the single exception and just because he gets a few more cases a year from other circuits, why should he have this additional thing in the nature of a fee? Let him be adequately compensated for trying all the cases that will come before him, and then let's stop there and have a clean cut system.
* *'

"At page 2758, Mr. Brown of Christian County, read the sentence requiring the fees of all the courts, judges and magistrates, to be paid into the state or county treasury. And there followed these questions and answers:

"Mr. Brown (of Christian): 'Now, that means that the judge would have to send his \$10.00 change of venue fee to the state treasury instead of getting it for the extra work he has to do in trying to get this law suit that is sent to him, isn't it?'

"Mr. Righter: 'Yes, that is right.'"

There will be no difficulty encountered in so distributing said change of venue fees other than those in the City of St. Louis, Missouri. Section 1074, P.S. No. 1939, requires that said change of venue fees, when deposited with a circuit clerk of the City of St. Louis to be paid into the city treasury, are to be used for the payment of salaries of circuit judges and court stenographers of said city. In such case, the change of

venue fees apparently are not considered additional compensation for the circuit judge hearing the cause as in other cases, but goes toward the payment of salaries for all circuit judges in the City of St. Louis, as well as court stenographers in said city. Notwithstanding this fact, we consider that part of Section 1074, supra, to be in conflict with Section 24, Article V, Constitution, 1945, supra, requiring fees of all courts, judges, etc., to be paid monthly into the state treasury or county paying their salaries. Section 31, Article VI, Constitution, 1945, reads in part:

"The city of St. Louis, as now existing, is recognized both as a city and as a county unless otherwise changed in accordance with the provisions of this Constitution. * * *"

Therefore, in this instance under Section 24, Article V, supra, the City of St. Louis can be considered as a county.

Where there is a conflict between an act and the Constitution the court must declare said act, in so far as it conflicts with the Constitution, void. See *Gilkeson v. Missouri Pac. R. Co.*, 121 S.W. 138, 222 Mo. 173. Also *State ex rel. Elsas v. Missouri Workmen's Compensation Commission*, 2 S.W. (2d) 796, 318 Mo. 1004. In view of the foregoing, we believe the change of venue fees paid to the circuit clerk of the City of St. Louis should be paid by said clerk into the state treasury or city in proportion to the amount of salary paid by the state or the city as provided in S.C.S.S.B. No. 442.

CONCLUSION

Therefore, it is the opinion of this department that the change of venue fee required to be filed with the circuit clerk upon the filing of an application for a change of venue under Section 1074, R.S. Mo. 1939, should be paid by the circuit clerk of the county or City of St. Louis wherein the cause is sent on change of venue, into the state treasury, county or City of St. Louis in proportion to the amount of salary paid the circuit judge out of the state treasury, county or City of St. Louis as the case may be.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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