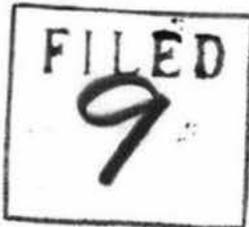


CIRCUIT CLERKS, )  
 )  
FEES IN CASES OF )  
 )  
CHANGE OF VENUE: )

The Circuit Clerk is entitled to retain all fees earned by him in any case of change of venue from another county.



April 8, 1952

49-52

Mr. Earl R. Blackwell  
Assistant Prosecuting Attorney  
Jefferson County  
Hillsboro, Missouri

Dear Mr. Blackwell:

We have given careful consideration to your request for an opinion, which request is as follows:

"I should like an opinion upon the following situation:

"When a case comes to Magistrate Court of County A from County B on a Change of Venue, and is subsequently appealed to the Circuit Court of County A, is the circuit clerk's fee non-accountable?"

The compensation of the circuit clerk in a county of the third class, wherein the offices of circuit clerk and recorder are separate, is provided in Section 483.330, RSMo 1949. This statute gives the circuit clerk, in addition to his regular salary, "all fees earned by him in cases of change of venue from other counties."

A situation such as that described in your letter is somewhat unusual and probably was not contemplated by the Legislature at the time the law was enacted. Magistrate courts were not inaugurated in this state until after the present Constitution was adopted in 1945. A change of venue from one county to another through the channel of magistrate courts is something new in our legal procedure. The appellate courts have not yet had occasion to construe the law pertaining to some of the questions that may arise in such cases.

Mr. Earl R. Blackwell

Having no definite decisions to guide us, we are bound to rely upon those well-known principles of law which hold that the intent of the Legislature and the rule of reason must be followed. Evidently the purpose of the law is to give the circuit clerk some extra pay for work done in a case coming from outside his own county. The case may come direct to the circuit court, or it may come via the magistrate court. In either case the clerk is burdened with additional services and should receive the extra pay. It is not unreasonable, therefore, to assume that the Legislature intended to make the proviso apply to all cases of change of venue from one county to another.

CONCLUSION

It is the opinion of this office that the circuit clerk in a county of the third class is entitled to retain all fees earned by him in any case of change of venue from another county coming direct to the circuit court or to such court on appeal from the magistrate court of the same county.

Respectfully submitted,

B. A. TAYLOR  
Assistant Attorney General

APPROVED:

  
\_\_\_\_\_  
J. E. TAYLOR  
Attorney General

BAT/fwh