

MAGISTRATE COURTS: Distribution of costs and fines in criminal cases.

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Honorable Taylor W. Strubinger
Magistrate District No. 2
32 A So. Central Avenue
Clayton, Missouri

Dear Sir:

Your request for an official opinion directed to Mr. Drake Watson, Assistant Attorney General has been assigned to me for reply. Your request reads:

"Please advise if all Criminal Costs and fines are payable to the County Treasurer? House Bill No. 526, Section 3, states that the constable shall pay all fees received by him, by virtue of his office into the County Treasury monthly; under the old Justice of the Peace practice, the Justice collected \$2.70 on each Criminal case, plus cost for continuance and issuing subpoenas, this money was turned into the County Treasury with a copy of the report being filed with the County Clerk. Other moneys, such as fines, fees for serving papers, warrants, commitments and witnesses fees were turned into the treasurer by the Constable.

"I have been advised by the State Auditor's office that the Magistrate does not turn in any fees to the State in Criminal Cases, also that all fees that may accrue in the future on all pending Justice cases shall be turned into the County Treasury."

From reading your letter we apprehend the question to be: To whom are the costs and fines turned over which accrue in criminal cases in Magistrate Courts.

Your attention is directed to Senate Bill 193, Section 3856.36, Revised Statutes Annotated which reads:

"It shall be the duty of the magistrate before whom any conviction may be had under this article, if there be no appeal, to make out and certify, and, within ten days after the date of judgment deliver to the treasurer of the county and clerk of the county court each a statement of the case, the amount of the fine and return day of the execution, and the name of the officer charged with the collection thereof; and the county treasurer shall charge the officer with the amount of such fine, and unless the same be paid into the county treasury on or before the return day of the execution, the county court shall, at their next term, ten days' notice being given to the officer in default and his sureties, render an account stated against them for the amount due, and twenty per cent thereon, making, however, proper deductions for insolvencies; on which account stated suit may be maintained and when collected, the proceeds paid in the county treasury."

The above section provides for execution on the judgment after a conviction has been rendered in the magistrate court, and requires the officer charged with collecting the judgment to turn into the county treasury the amount of the fine on or before the return day of the execution. Consequently, we believe that as to fines, when they are collected, they should be turned into the county treasury.

In counties of the first class the constable is the officer designated to attend the magistrate courts and would be the officer charged with collecting the judgment and turning the amount of the fine into the county treasury as provided in Section 3856.36, supra. Section 6 of House Bill No. 526, Section 13381.6, R. S. A. provides:

"A constable shall devote his entire time to the duties of his office and shall serve and execute all warrants, writs of attachment, subpoenas and all other process, both civil and criminal, appertaining to the business of such magistrate district, and he shall act as conservator of the peace within his county. He or a deputy shall attend the magistrate court of his district when in session, preserve order therein, and

perform such other duties as may be directed by the magistrate or provided by law, and shall be authorized to execute and serve process outside of his district, and at any place within the county. Writs and process directed from one county to any county in the first class may run in the name of any constable in the county."

Now let us consider what disposition shall be made of the costs collected in criminal cases after conviction in the magistrate court in counties of the first class. Under an execution on a judgment the costs and fine would be collected at the same time by the constable, and as herein concluded the fine would be paid into the county treasury.

Section 3 of House Bill No. 526, Section 13381.3, Rev. Stats. Ann., provides:

"A constable shall within ten days after receiving his commission execute and deliver to the county court of such county a surety bond in the amount of \$5,000.00 to be approved by the court and paid for by the county, conditioned that he will faithfully execute all process to him directed and delivered and pay to the proper parties all moneys received by him by virtue of his office, and pay into the county treasury monthly all fees received by him by virtue of his office, and in every respect discharge all of the duties of a constable according to law.* * *"
(Emphasis ours.)

Under the above section we believe that the moneys collected by the constable in the nature of costs would be paid by him to the proper parties. For example, jurors fees would be paid to the jurors, prosecuting attorneys fees would be paid to the prosecuting attorney and magistrate and magistrate clerk fees would be paid to them respectively and all the fees that the constable would be entitled to by virtue of his office would be collected and turned into the county treasury.

As to the disposition of the magistrate and magistrate clerk fees collected by the constable and paid to those officers, we

direct your attention to Section 24, Article V of the Constitution of 1945, which, in part, provides:

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

In reading the above quoted portion of Section 24, we observe that no distinction is made between fees received in criminal cases and fees received in civil cases. In either type of case the fee or fees received by all courts, judges and magistrates are to be paid monthly into the state treasury or to the county if the salaries are paid by the county.

Section 21, Article V of the Constitution of 1945, provides:

"Magistrate Courts--Administration.--The general assembly shall provide for the administration of magistrate courts consistent with this Constitution."

Pursuant to the above constitutional provision the 63rd General Assembly enacted Senate Bill No. 207, which pertains to magistrates and magistrate courts, and Section 23 of said bill, in part, provides:

"* * *Except as provided in Section 23a of this act, it shall be the duty of each clerk of the magistrate court, with the approval of the magistrate to charge upon behalf of the State every fee that accrues in his office and to receive the same, and at the end of each month, pay over to the director of revenue all monies collected by him as fees, taking two receipts therefor, one of which he shall immediately file with the director of revenue, and shall at the end of each quarter make out an itemized and accurate list of all fees in his office, in which list shall be itemized all fees collected by him and also all fees due his office which have not been paid, giving the name of the person or persons paying or owing the same, and turn the same over to the director of revenue, stating that he has been unable, after the exercise of diligence, to collect the part unpaid, said report to be verified by affidavit, and it shall be the duty of the director of revenue to cause the fees unpaid within one year from the date

accrued to be collected by law.

"All magistrate fees received by the director of revenue shall be deposited by him with the state treasurer in a special fund to be denominated 'magistrate fund', and all moneys in said fund shall be used exclusively for the payment of salaries of magistrates, their clerks, deputies and employees; provided, however, that such salaries may also be paid from the general revenue of the state whenever either the balance in the magistrate fund or the appropriation from such fund is insufficient to pay such salaries."

In the above quoted section reference is made to Section 23a of Senate Bill No. 207, which provides:

"In all cases where additional magistrates are selected to fill offices created by order of the circuit court as provided in Section 1 of this act, it shall be the duty of the clerk of each such magistrate court, with the approval of the magistrate to charge upon behalf of the county every fee that accrues in his office and to receive the same, and at the end of each month pay over to the county treasurer all moneys collected by him as fees taking from said treasurer two receipts therefor, one of which he shall immediately file with the county clerk, and at the end of each quarter such magistrate shall make out an itemized and accurate list of all fees in his office, in which list shall be itemized all fees collected by him and also all fees due his office which have not been paid, giving the name of the person or persons owing the same and turn the same over to the county treasurer stating that he has been unable after the exercise of due diligence to collect the part unpaid, said report to be verified by affidavit.

"All magistrate fees received by the county treasurer shall be deposited by him in a special fund to be denominated 'additional magistrate fund', and withdrawals may be made during the current fiscal year only for

the payment of salary of additional magistrate and clerks, deputy clerks and employees of such additional magistrate. The balance, if any, remaining in said fund at the end of the year may be transferred to the general revenue fund of the county."

In reading Sections 23 and 23a, supra, it becomes apparent that the General Assembly has enacted laws consistent with Section 24, Article V of the Constitution, supra, by providing that all fees accruing in the magistrate court shall be paid to the Director of Revenue, except fees accruing in magistrate courts, additionally created by order of the circuit court, when in such cases said fees are to be turned into the county treasurer. Therefore, we believe that all magistrate fees, whether they accrue in civil or criminal cases, are to be turned over to the Director of Revenue, unless the magistrate court has been created by order of the circuit court.

Senate Bill No. 333 provides for certain fees allowed clerks of the magistrate courts, and in part, reads:

"All such fees shall be charged on behalf of the State or county paying salary of such clerk and shall be paid and accounted for in the same manner as magistrate fees."

Section 13409, R. S. Mo. 1939, provides for fees in criminal proceedings allowed clerks of the several courts of this state possessing criminal jurisdiction, which would include magistrate courts. While no provision is made for the disposition of these fees allowed such clerks, we believe that as to the fees received under section 13409 by clerks of the magistrate courts they would also be accounted for in the same manner as magistrate fees. Such would be in consonance with the intention of the legislature as manifested in the above quoted portion of Senate Bill No. 333.

Like the magistrates, the clerks of the magistrate courts are compensated for their services by a fixed salary rather than by fees for services performed in connection with their office, and under the mandate of Section 24, Article V of the Constitution and the manifested intention of the legislature, we believe that all fees received by clerks of the magistrate courts should be turned into the Director of Revenue unless they be clerks of magistrate courts created by order of the circuit court, when in such cases their fees would be turned into the county treasury.

CONCLUSION

In view of the foregoing, it is the opinion of this department that the costs and fines which accrue in criminal cases in magistrate courts are disposed of as follows: The fines are turned over to the county treasury. The costs comprising the fees are distributed to the proper parties entitled to receive fees. That the fees received by the magistrate and clerk of the magistrate court are turned over to the Director of Revenue unless the magistrate court is one created by order of the circuit court, when in such case the magistrate and magistrate clerk fees would be turned over to the county treasury of the county paying the salary of such officers.

Respectfully submitted,

RICHARD F. THOMPSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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