

SHERIFFS:
MAGISTRATES:
MAGISTRATE CLERKS:
FINES, PENALTIES & FORFEITURES:

CCSHCS for Senate Bill No.
100 of the 77th General Assem-
bly, effective September 28,
1973, authorizes the clerks
of the magistrate courts of

certain counties to collect fines, penalties and forfeitures and other sums of money accruing to the state by virtue of a magistrate court order but requires the sheriffs of such counties to make such collections if the clerks do not do so.

OPINION NO. 239

August 21, 1973



Honorable William Dick Fickle
Prosecuting Attorney
Platte County
612 Third Street
Platte City, Missouri 64079

Dear Mr. Fickle:

This opinion is in response to your question asking whether the clerk of the magistrate court of Platte County or the sheriff of Platte County will have the responsibility for collecting fines, penalties, forfeitures and other sums of money accruing to the state by virtue of any order, judgment or decree of the magistrate court, under the provisions of CCSHCS, Senate Bill No. 100 of the 77th General Assembly, effective September 28, 1973.

The bill to which you refer repeals Section 57.130, RSMo 1969, and provides in lieu thereof:

"57.130. The sheriffs of the several counties shall collect and account for all the fines, penalties, forfeitures and other sums of money, by whatever name designated, accruing to the state or any county by virtue of any order, judgment or decree of a court of record, provided that in magistrate courts the clerk of the court, except counties of the first class having a charter form of government and not containing all or part of any city having a population in excess

Honorable William Dick Fickle

of four hundred thousand and except counties of the second class, may collect fines, penalties, forfeitures and other sums of money accruing to the state by virtue of any order, judgment or decree of the magistrate court."
(Emphasis added)

For the sake of clarity we have underscored the provisions added to Section 57.130.

We note by comparison that Senate Bill No. 100 as introduced and the House Committee Substitute for the bill both provided that in magistrate courts the clerk of the court ". . . shall perform the duties in the same manner as they are now performed by the county sheriff in the collection of fines, penalties, forfeitures and other sums of money accruing to the state by virtue of any order, judgment or decree of the magistrate court." Senate Bill No. 100, as perfected, contained an exception as to counties of the first and second classes and also provided that the clerks "may" collect such money.

In view of the legislative history of the bill and the obvious deliberate use of the mandatory word "shall" in the bill as introduced and the permissive word "may" as finally passed, it is our view that the legislature intended that in the counties in which the clerk of the magistrate court is authorized to collect such sums the clerk is not required to do so and the ultimate responsibility for such collections remains with the sheriffs.

The Missouri cases respecting the construction of the words "may" and "shall" are annotated extensively in V.A.M.S., Section 1.020, Anno., Construction of Statutes, Note 9. The general rule is that the term "may" in a statute, unless the contrary is otherwise indicated therein, is generally held to be permissive, not mandatory. Bloom v. Missouri Board for Architects, Professional Engineers and Land Surveyors, 474 S.W.2d 861 (St.L.Ct.App. 1971).

Finally, we note that the question has been raised from another county as to whether or not the sheriff is entitled to a fee for collecting costs under subsection 6 of Section 57.290, Senate Bill No. 516 of the 76th General Assembly, where the clerk and not the sheriff makes the collections. In our view the sheriff is not entitled to the fee under such circumstances.

CONCLUSION

It is the opinion of this office that CSHCS, Senate Bill No. 100 of the 77th General Assembly, effective September 28, 1973, authorizes the clerks of the magistrate courts of certain

Honorable William Dick Fickle

counties to collect fines, penalties and forfeitures and other sums of money accruing to the state by virtue of a magistrate court order but requires the sheriffs of such counties to make such collections if the clerks do not do so.

The foregoing opinion, which I hereby approve was prepared by my assistant, John C. Klaffenbach.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth". The signature is written in dark ink and is positioned above the typed name.

JOHN C. DANFORTH
Attorney General