

SECRETARY OF STATE: Limited to statutory fee of \$1.00 for notification of service of process.

September 23, 1941

9-24

Honorable Dwight H. Brown
Secretary of State
State Capitol Building
Jefferson City, Missouri



Dear Sir:

We are in receipt of your letter of September 18th wherein you state as follows:

"With my letter of July 3, 1941, I sent you copy of Senate Bill No. 67, approved by the Governor on June 26, 1941. You returned an opinion dated July 8, 1941, signed by Mr. Wasserman.

"Another question has arisen in connection with this new law. The law provides that a fee of \$1 is to be paid to the Secretary of State when such process is served upon me.

"The law instructs that I mail the notice and copy of the petition and summons to the defendants by registered mail, deliver to addressee only. This method of mailing costs 31¢ or 34¢ per defendant, depending upon the number of pages in the petition.

"I have been served with a process directed to three individual defendants, with fee of \$3. In another instance I have been served with similar process against three defendants and the fee paid

was \$1. Study of the law does not make clear to me whether it is intended that I handle a process against three or four or even more defendants for \$1 fee."

Section 5 of Senate Bill 67 provides as follows:

"Service of process under this act shall be made by serving a copy thereof, together with a copy of the petition, upon the Secretary of State of the State of Missouri at his office in Cole County, Missouri, or in the absence of the Secretary of State, upon his Chief Clerk at his office in Cole County, Missouri, together with a fee of \$1.00 and such service shall be sufficient service upon said non-resident, provided that within fifteen days after said service upon the Secretary of State, or upon his Chief Clerk, as herein provided. The Secretary of State shall immediately mail to the defendant, and to each of the defendants, if there be more than one by restricted, registered mail, addressed to the defendant at his last known address, residence, or place of abode, a notification of said service of process upon the Secretary of State, or his Chief Clerk as herein provided; provided, however, that the court, or judge thereof in vacation, may, upon good cause shown, by order extend such time for notification."

Under the above section, upon the receipt of a fee of \$1.00, the Secretary of State is required to immediately mail to the defendant, "and to each of the defendants, if there be more than one," notification of service of process. There is nothing in the language of the above section which would authorize a graduation of fees depending upon the number of defendants in the case.

Section 14 of said bill provides as follows:

"The fee of \$1.00 paid by plaintiff to the Secretary of State under Section 5 at the time of service of such process shall be taxed as part of plaintiff's costs if he prevails in the action or proceeding."

The above section again contemplates that the fee to be paid by the plaintiff to the Secretary of State, be only \$1.00.

We appreciate the fact that the number of defendants in a case may be such that the cost of postage may far exceed the \$1.00 fee tendered to the Secretary of State. However this may be, we have no authority to broaden the plain meaning of the language in the above sections to require a fee of \$1.00 for each defendant notified by the Secretary of State.

In the case of *Cummins v. Kansas City Public Service Co.*, 334 Mo. 672, 66 S. W. (2d) 920, 1.c. 931, the court said:

"It is, of course, fundamental that where the language of a statute is plain and admits of but one meaning there is no room for construction."

Again in the case of *State v. Thatcher*, 338 Mo. 622, 92 S. W. (2d) 640, 1. c. 643, the court said:

"We are not persuaded that the law-makers intended to make any provision for St. Louis county in this particular act: First, because the language of the enactment is perfectly clear and unambiguous. In such case there is nothing to construe, and no intent contrary to the evident intent can rationally or permissibly be implied. *"

Hon. Dwight H. Brown

-4-

Sept. 23, 1941

From the foregoing we are of the opinion that, irrespective of the number of defendants the Secretary of State is required to notify of the service of process upon him, said Secretary of State is limited to the statutory fee of \$1.00 for each case.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney-General

APPROVED:

VANE C. THURLO
(Acting) Attorney-General

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