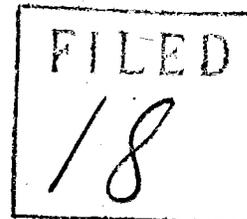


MAGISTRATES: No fees accrued to magistrate court when judge thereof grants temporary injunction. No record made in magistrate court of such proceeding.



October 9, 1947

10/17

Honorable Clyde E. Combs  
Prosecuting Attorney  
Barton County  
Lamar, Missouri

Dear Mr. Combs:

This is in reply to your letter of October 3, 1947, requesting an opinion from this department, which reads as follows:

"Do any fees accrue to the Magistrate Court when a Judge thereof issues a temporary injunction in a matter pending in the circuit court when the circuit Judge is absent from the county and court is not in session, and if so, in what manner are they paid? Also, what record should be made by the Magistrate Clerk in his office in such cases.

"The above refers to injunctions obtained in the Magistrate Court under the provisions of Sections 1662 and 1663, Revised Statutes of Missouri 1939, as amended by the laws of 1945."

Section 1661, Mo. R.S.A., which provides that injunctions may be granted by the judges of magistrate courts, is as follows:

"Injunctions may be granted by the circuit court or judge thereof in vacation, and by the magistrate court or any magistrate thereof in vacation."

It is further provided in Section 1662, Mo. R.S.A., that a judge of the magistrate court can grant said injunctions only when the circuit court is not in session and the judge thereof is absent from the county. Said section reads:

"Before an injunction shall be granted by the magistrate court or any magistrate, the applicant shall produce satisfactory evidence that there is not then any circuit court in session nor any judge of the circuit court within such county."

The procedure by which an injunction is obtained is found in Section 1663, Mo. R.S.A., which provides as follows:

"Before any party shall be entitled to the injunction herein provided, he shall have filed in the circuit court, or in the office of the clerk thereof, having jurisdiction of the suit, his petition setting forth his cause of action; and when the injunction shall be granted by the circuit judge in vacation, or the magistrate court or judge thereof in vacation, it shall be in writing, signed by the judge aforesaid granting the same, and returned together with the bond, to the office of the clerk of the circuit court wherein such petition shall have been filed, and become a part of the record in said cause; and shall be enforced as an injunction of the circuit court."

It will be noted that the petition must be filed in the circuit court, and when the injunction prayed for is granted by the circuit judge in vacation or by the magistrate court or judge thereof in vacation, said injunction must be returned, together with the bond, to the office of the circuit clerk where it becomes a part of the record in said cause and is enforced as an injunction of the circuit court. The injunction bond is, of course, also approved and filed in the circuit court. Section 1672, R.S.Mo. 1939.

The above procedure is followed even though said injunction is granted by a judge of the magistrate court. It is, therefore, apparent that said proceeding is one solely within the cognizance of the circuit court and is in no instance a proceeding of the magistrate court. A judge of the magistrate court is authorized to grant said injunction only when the circuit court is not in session and the judge thereof is absent from the county. And even in such case said judge proceeds

on a petition filed in the circuit court, and when an injunction is granted and signed by said judge it is returned to the circuit clerk's office where it becomes a record of the circuit court and is enforced as an injunction of the circuit court. Injunctions granted by judges of the magistrate court are temporary injunctions and a part of the cause filed in the circuit court. In the case of *State v. Corneli*, 152 S.W. (2d) 83, we find this stated at page 86:

" \* \* \* Neither the county court nor the circuit court can grant an injunction until a petition has been filed in the circuit court, which was not done in this case. The Act of 1939 does not, either expressly or impliedly, enlarge the power of county courts with reference to injunctions."

Also, in the case of *Missouri Electric Power Co. v. City of Mountain Grove*, 176 S.W. (2d) 612, the court said at pages 615 and 616:

"Section 22, Article VI, Constitution of Missouri, provides that the circuit court shall have 'exclusive original jurisdiction in all civil cases not otherwise provided for.' Respondents contend that the phrase 'not otherwise provided for' is to be construed as, not otherwise provided for in this constitution, and respondents urge that, there being no provision of the constitution giving jurisdiction to county courts to grant injunctions, the exclusive jurisdiction to grant injunctions must be and remain in the circuit courts. \* \* \* Sections 1661, 1662 and 1663, supra, do not, as we have stated, purport to give to county courts jurisdiction of injunction suits. The county court cannot grant a temporary injunction until a petition is filed in the circuit court. *State ex rel. Association for Convalescent Crippled Children v. Corneli*, supra. Injunctions which may be granted by the circuit judge in vacation, or by the county court or judges thereof in vacation, are

temporary injunctions. \* \* \* The temporary injunction so granted was returnable to and is to be 'enforced as an injunction of the circuit court.' Section 1663, supra; State ex rel. Association for Convalescent Crippled Children v. Corneli, supra."

(Section 22 of Article VI of the 1875 Constitution is now Section 14 of Article V of the 1945 Constitution, and contains the same provision with respect to civil jurisdiction; Sections 1661, 1662 and 1663 are substantially the same as those in the 1939 statutes, except that magistrate courts have been substituted for county courts.)

The above conclusion is in line with the general plan of the lawmakers in authorizing judges of the magistrate court to act in certain instances in the absence of the circuit judge (see, for example, Section 20 of Article V of the Constitution and Section 11 of Senate Bill No. 94 of the 64th General Assembly).

In view of the foregoing, we believe that no fees accrue to the magistrate courts in injunction proceedings. Under the provisions of Section 23 of Senate Bill No. 94 of the 64th General Assembly a fee of \$5.00 is allowed the magistrate in each civil proceeding instituted in his court. Injunction proceedings are instituted in the circuit court and the required fees are paid into that court. The judge of the magistrate court is authorized merely to act in place of the circuit judge in injunction proceedings in certain instances.

With respect to the records of such proceedings, it is expressly provided that when a judge of the magistrate court grants an injunction the same shall be returned to the office of the circuit clerk wherein the petition was filed and become a part of the record in said cause. The fact that said injunction is a temporary restraining order and made a part of the record of the cause in the circuit court eliminates the necessity of any record of the same in the magistrate court.

Conclusion.

It is, therefore, the opinion of this department that no fees accrue to the magistrate court when a judge thereof grants a temporary injunction when the circuit court is not in session and the circuit judge is absent from the county, and, further, that no record should be made by the magistrate clerk of such proceeding.

Respectfully submitted,

DAVID DONNELLY  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
Attorney General

DD:ml