

MAGISTRATES: Only fee to be allowed and collected by
magistrate in criminal proceedings is
magistrate court fee, provided for in
Senate Bill No. 108.

FILED

June 20, 1947

6/24

Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Sir:

This will acknowledge your request for an official
opinion, which reads:

"Section 8459, R.S. Mo. 1939, provides
in part:

"Every justice of the peace and each
judge of the courts of criminal cor-
rection of the City of St. Louis shall
forward to the commissioner a record
of the conviction of any person in his
court for a violation of any of said
laws for which he shall receive a fee
of fifty cents to be taxed as costs in
the case."

"Senate Bill No. 108, enacted by the
64th General Assembly, and approved by
Governor Donnelly on June 2, 1947, pro-
vides in part:

"In each criminal proceeding and in
each preliminary hearing instituted in
any magistrate court, a magistrate
court fee of two dollars and fifty
cents (\$2.50) shall be allowed and col-
lected to be in full for the services
of the magistrate or the clerk of said
court. Such fees shall be charged,
collected and disposition thereof shall
be made as provided by law applicable
thereto."

"Your opinion is respectfully requested on the following question. Should the magistrate judge charge the fee provided for in Section 8459, R.S. Mo. 1939, in addition to the fee provided for in Senate Bill No. 108, enacted by the 64th General Assembly."

Section 8459 (b), R.S. Mo. 1939, provides as follows:

"Every court having jurisdiction over offenses committed under this article or under the provisions of any statute of this State regulating the operation of motor vehicles on highways, or any felony in the commission of which a motor vehicle is used, shall forward to the commissioner a record of the conviction of any person in said court for a violation of any of said laws, and every such court, except justice of the peace courts, and courts of criminal correction in the City of St. Louis shall have the power of suspending or revoking the license of any licensee under this article or the certificates of registered chauffeurs or registered operators under Sections 8372 and 8373, and amendments thereto, and shall certify to the commissioner a record of such suspension or revocation. Every justice of the peace and each judge of the courts of criminal correction of the City of St. Louis shall forward to the commissioner a record of the conviction of any person in his court for a violation of any of said laws for which he shall receive a fee of fifty cents to be taxed as costs in the case, and may recommend to the commissioner a suspension or revocation of said person's license or the certificate of such chauffeur or registered operator. The commissioner may suspend or revoke the license or certificates of any of the persons convicted as aforesaid."

(Underscoring ours.)

The above statute is contained in Article 3, Chapter 45 of the Revised Statutes pertaining to motor vehicles. Under the above statute, whenever a person was convicted in the justice of the peace court for violation of any motor vehicle law constituting a misdemeanor, the justice of the peace was required to forward to the commissioner of motor vehicles a record of the conviction for which he received a fee of 50¢ to be taxed as costs in the case.

Section 656.1, Mo. R.S.A., page 12 of the Pocket Part (Laws of 1945), provides:

"Whenever, in any statute, the word 'justice' (referring to justice of the peace) or the words 'justice of the peace' appear, said word or words shall hereafter be deemed to include and refer to 'magistrate,' unless there be something in the subject or context repugnant to such construction."

By the terms of the above statute, the word "magistrate" is substituted where theretofore statutes enacted stated the "justice of the peace" had certain duties. Consequently, under the provisions of Section 8459, supra, the magistrate would have to perform the same duties as were formerly imposed on the justice of the peace regarding the forwarding of records of conviction to the commissioner of motor vehicles.

The forwarding of such a record would be a service performed by the magistrate in connection with a criminal proceeding for which, in the absence of any contrary statutory provision, he would receive a fee of 50¢, as provided in Section 8459, supra. However, the 64th General Assembly enacted Senate Bill No. 108 with an emergency clause, which was approved by the Governor on June 2, 1947, and became effective on that date. Section 1, subparagraph (2) of said bill provides as follows:

"In each criminal proceeding and in each preliminary hearing instituted in any magistrate court, a magistrate court fee of two dollars and fifty cents (\$2.50) shall be allowed and collected to be in full for the services of the magistrate or the clerk of said

court. Such fees shall be charged, collected and disposition thereof shall be made as provided by law applicable thereto."

(Underscoring ours.)

We believe that the effect of the above statutory provision is to provide that the magistrate court fee of \$2.50 shall be in lieu of all fees that the magistrate was formerly entitled to for services performed in criminal proceedings, and that no fees in criminal proceedings, other than the \$2.50 magistrate court fee, would be allowed and collected by the magistrate.

Conclusion.

It is, therefore, our opinion that the magistrate should not charge and collect the fee provided for in Section 8459, R.S. Mo. 1939, in addition to the \$2.50 magistrate court fee provided for in Senate Bill No. 108, enacted by the 64th General Assembly, which is now in effect, and, further, that the \$2.50 magistrate court fee shall be the only fee collected in criminal proceedings in the magistrate court for services performed by the magistrate or by the clerk of the magistrate court.

Respectfully submitted,

RICHARD F. THOMPSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

RFT:ml