

CIRCUIT CLERK: Circuit clerk in third-class county entitled to
FEE: change of venue fee earned, in addition to salary
provided in House Bill 773, but not entitled to
retain fees in case originally filed in circuit
court by consent of parties.

January 22, 1947



Mr. Earl R. Sutton
Clerk of the Circuit Court
St. Charles County
St. Charles, Missouri

Dear Sir:

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

"For my information, would be pleased to
have your opinion on venue cases as to the
Circuit Clerk's retaining fees, such as
case King vs. King reported in 170 S.W. 2nd
on page 983.

"House Bill #775 provides for circuit clerks
in 3rd class counties to retain in addition
for his services, all fees earned by him in
cases of change of venue from other counties.

"In the above case it was a venue by consent,
plaintiff nor the defendant were residents
of the county, but gave the court jurisdiction
by consent. The question I would like to have
your opinion on is can the clerk retain his
fees earned in such cases."

You referred to House Bill 775, passed by the 63rd General
Assembly, as authority for the circuit clerk in counties of the
third class retaining change of venue fees earned.

We understand that, while your county is classified as a
county of the third class, the offices of circuit clerk and
recorder of deeds are separate and distinct. House Bill 775,
supra, deals only with circuit clerks and recorders of deeds
in counties wherein the two offices shall have been combined.
We do find House Bill 773, passed by the 63rd General Assembly,
contains a very similar provision relative to the clerks' re-
taining change of venue fees and deals with only circuit clerks
of counties of the third class. Section 1 of said House Bill
reads:

"The circuit clerk in counties of the third class, wherein there shall be a separate circuit clerk and recorder, shall receive annually for his services the following: In counties having a population of less than 7,500 the sum of \$1,200; in counties having a population of 7,500 and less than 10,000 the sum of \$1,500; in counties having a population of 10,000 and less than 15,000 the sum of \$1,700; in counties having a population of 15,000 and less than 17,500 the sum of \$1,900; in counties having a population of 17,500 and less than 20,000 the sum of \$2,100; in counties having a population of 20,000 and less than 25,000 the sum of \$2,300; and in counties having a population of 25,000 or more the sum of \$2,500; provided that the circuit clerk shall be allowed to retain, in addition to the sums above allowed, all fees earned by him in cases of change of venue from other counties."

In the case cited in your request, King vs. King, 170 S.W. (2d) 983, a petition for divorce was filed in Pulaski County, Missouri; the petition was dismissed by the Circuit Court for the reason the plaintiff was not a resident of said county, however, on appeal, the Supreme Court held that the plaintiff was a resident of said county, but further held that made no difference for the reason that the jurisdiction was waived by the defendant appearing generally and pleading to the merits. In that case there was no change of venue, the petition was originally filed in the Circuit Court of Pulaski County and was not transferred therefrom to another circuit court in another county on a change of venue.

Article 11, Chapter 6, R.S. Mo. 1939, deals exclusively with change of venues in civil cases. Section 4015 to 4036, R.S. Mo. 1939, likewise deals with change of venue in criminal cases. Such provisions all clearly indicate that, before a change of venue can be granted, the petition or some pleading must be filed in the court so as to give said court jurisdiction to pass upon an application for a change of venue.

Change of venue has often been defined to mean a transfer of a cause from one court to another. In State v. Bruce, 55 S.W. (2d) 733, l.c. 736-737, the court said:

"Although there was a change of judges to try the case in the Johnson circuit court, there was no 'change of venue' from one court to another. Section 911, R.S. No.

1929 (Mo. St. Ann. Sec. 911), provides that in the situation herein disclosed 'a change of venue shall not be awarded to another county.' And, strictly speaking, a 'change of venue' means a transfer of a cause from one court to another. Section 906, R.S. Mo. 1929 (Mo. St. Ann. Sec. 906). 'To "change the venue" is to transfer the cause for trial to another county or district.' Black's Law Dictionary, p. 1214. * * * * *

Also, in Towle v. City of St. Joseph, 185 S.W. 1151, l.c. 1152, the court defined a change of venue as follows:

"The point here claimed by defendant is that division No. 1 was without jurisdiction to try the case at the same term of the court. Section 1935 does not apply to the case at bar. The case is governed by the act of the General Assembly creating two divisions of the Buchanan circuit, approved April 13, 1889, found in Laws 1889, p. 74. Section 3 of that act says:

"In case of any transfer of a cause from one division to another, it shall be the duty of the clerk to place the same at the foot of the docket for that term of the division to which the same has been transferred."

"The transfer of the case from division 2 to division 1 was a change of venue. State ex rel. v. Woodson, 86 Mo. App. 253, loc. cit. 262. * * * * *

Certainly, in King v. King, supra, there was no change of venue involved. In that case the court, wherein the petition was originally filed, retained jurisdiction of the cause and there was no transfer of said cause from one court to another.

CONCLUSION

Therefore, it is the opinion of this department that the provisions contained in House Bill 773, supra, fixing the

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annual salary of the clerk of the circuit court in counties coming within the classification of a third-class county and providing that in addition thereto said clerk may retain, for his services, all fees earned by him in cases of change of venue from other counties, does not mean such cases as represented in King v. King, supra, where in fact no change of venue was requested, but the court had jurisdiction by consent and retained said jurisdiction.

Respectfully submitted,

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APPROVED:

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ARR:LR