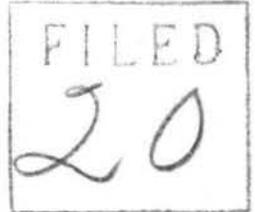


CIRCUIT CLERKS: Circuit clerks may charge 10¢ per hundred words and
TRANSCRIPTS: figures for preparing and certifying the record proper,
FEES: and 5¢ per hundred words and figures for inserting
and certifying the bill of exceptions or abbreviated
transcript of the evidence in cases on appeal to the
appellate courts.

May 21, 1948



5-25

Honorable Marshall Craig
Prosecuting Attorney
Mississippi County
Charleston, Missouri

Dear Sir:

We have your letter of recent date wherein you request
an opinion from this department on the following statement:

"The Circuit Clerk of this County desires
an interpretation of Section 13407 with
reference to fees of clerks of the Circuit
Court. The question with which he is
confronted is the fee to which he is
entitled under this section and the new
code where an appeal is taken in a civil
case. The present rules, as we understand
them, are that the entire transcript shall
be filed with the clerk and question then
arises whether or not the clerk is entitled
to five cents per hundred words for the
filing of the transcript."

Section 13407, R. S. Mo. 1939, insofar as it relates to
your question, provides as follows:

"The clerks of the several circuit courts
of this state, and of the courts of common
pleas, shall receive in all civil proceed-
ings the following fees for their services:

* * * * *

"For making transcripts for the supreme
court or either court of appeals, for
every hundred words..... .10

"Provided, that in counties containing less
than forty-five thousand inhabitants, in
cases in which the party applying for such
transcript shall furnish to the clerk of
any circuit court, court of common pleas,

or criminal courts, a typewritten copy of any bill of exceptions, or any party thereof, then it shall be the duty of such clerk, at the request of the party so applying, to incorporate such copy into such transcript, and for the part so incorporated he shall receive only five cents per hundred words and figures."

Since Mississippi County, according to the last decennial census, contains a population of less than 45,000 inhabitants, it would come within the proviso clause.

Section 135, page 393, Laws of Missouri, 1943, which prescribes the duties of the clerk in respect to transcripts, provides in part as follows:

"(a) Within ninety (90) days after an appeal is taken the appellant shall prepare or cause to be prepared and filed with the clerk of the trial court a full transcript of the record in the cause including the bill of exception. When said transcript of the record has been agreed to by the parties, or by the judge, the clerk of the trial court, under his hand and the seal of the court, shall transmit said transcript of the record to the proper appellate court: provided, however, that the appellant and respondent, or their attorneys, may agree in writing upon an abbreviated or partial transcript of the evidence, either in narrative form, or in question and answer form, and the same shall be deemed and taken as sufficient on such appeal, and shall by the clerk be incorporated in the transcript of the record and certified and transmitted by said clerk to the proper appellate court, instead of the bill of exceptions mentioned above."

Pursuant to the provisions of said Section 135, the Missouri Supreme Court has promulgated Rule 1.04. This rule, in subsection (a), provides as follows:

"The distinction between the 'record proper' and the 'bill of exceptions' for the purpose of determining what may be submitted to the

appellate court in a civil action appealed from a trial court is abolished. The full transcript of the record, for which provision is made by Section 135 (1943 Act), except when otherwise agreed, shall include in the order filed or received in the trial court, the entire evidence, including objections or requests made as required by Section 122 (1943 Act), instructions, motions, orders, rulings, and other matters to which objection is taken, and shall set forth so much of the record, or recitals thereof, as is necessary for a determination of all questions presented to the court for decision, and such transcript shall be deemed to include the bill of exceptions within the meaning of Section 135 (1943 Act). The full transcript shall always include in chronological order the pleadings upon which the action is tried, the verdict, the findings of the court or jury, the judgment or order appealed from, motions and orders after judgment and the notice of appeal, together with their respective dates of filing or entry of record. In the event that the trial court extends the time to file the transcript such orders and the dates thereof shall be included in the transcript. If the respondent is dissatisfied with the appellant's transcript he may within the time allowed for serving his brief, file such additional part of the record as he deems necessary."

It will be noted that the court, by this rule, has abolished the distinction between "record proper" and "bill of exceptions" for appeal purposes in civil cases. However, we do not think that would affect the question here. Said Section 135 requires the clerk to prepare the transcript on appeal. The transcript includes the "record proper" and "bill of exceptions." Under the foregoing rule, the "record proper" contains the pleadings upon which the action is tried, the verdict, the finding of the court or jury, the judgment or order appealed from, motions and orders after judgment and the notice of appeal, together with respective dates of filing or entry of record.

Referring again to Section 135, it will be found that the "record proper" and the "bill of exceptions" (which may be

abbreviated) constitute the transcript of record, which is certified by the clerk. This section also seems to provide that the "bill of exceptions," or the abbreviated transcript of record, is incorporated in the transcript.

Under Section 13407, supra, the clerk is allowed ten cents per hundred words and figures for making and certifying the "record proper." Under the proviso clause of this same section, the clerk is allowed five cents for incorporating the "bill of exceptions" in the transcript. From a reading of these sections, we think that the same charge would be made for incorporating the abbreviated transcript of the evidence as is allowed for the full transcript of the evidence, which is in the "bill of exceptions," because the clerk does not have to transcribe or copy the bill of exceptions or abbreviated bill of exceptions. He merely has to incorporate it in the transcript and the only other thing he has to do with this part of the record is to certify it. Apparently the lawmakers took the position that the clerk should be allowed something for inserting and certifying the bill of exceptions as part of the record, and for that reason, the said proviso clause was placed in said Section 13407, supra.

CONCLUSION

From the foregoing, it is the opinion of this department that the clerks of circuit courts in counties having less than 45,000 inhabitants are entitled to charge ten cents per hundred words and figures for copying and certifying the record proper and five cents per hundred words and figures for incorporating and certifying a bill of exceptions or abbreviated transcript of evidence, in a transcript in cases which are appealed to the appellate courts.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

TWB:VLM