

MAGISTRATE COURTS: Disposition of \$5.00 filing fee paid to the  
FILING FEE: clerk of the magistrate court upon granting  
a change of venue.

FILED  
36

March 5, 1948

9/10

Honorable W. L. Halbrook  
Judge of Probate Court  
Ex-Officio Judge of Magistrate Court  
Dent County  
Salem, Missouri

Dear Judge Halbrook:

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

"Would appreciate very much to have an opinion concerning the \$5.00 filing fee in Civil cases.

"Question: Where there is a change of venue granted does the \$5.00 filing fee follow the case to the circuit Court? Or is the clerk required to send the \$5.00 filing fee to the Department of Revenue the first of the following month?"

Section 23, page 776, Laws of Missouri 1945, requires anyone commencing any proceedings in a magistrate court to pay the clerk of the court a five dollar fee. Said section further provides that such fee shall be charged against the losing party, and if recovered from said party, shall be repaid to the party making the deposit, and further, makes it the mandatory duty of the clerk of the court to charge upon behalf of the state each fee accruing to his office, and at the end of each month to turn same over to the Director of Revenue of the State of Missouri. Said section reads as follows:

"Upon the commencement of any proceedings in the magistrate court the party commencing the same shall pay to the clerk of said court a magistrate fee of five dollars (\$5.00). The fees herein provided shall be charged against the losing party, and if

recovered from said party the same shall be repaid to the party making the deposit of such fee. Except as provided in Section 23a of this act, it shall be the duty of each clerk of the magistrate court, with the approval of the magistrate to charge upon behalf of the State every fee that accrues in his office and to receive the same, and at the end of each month, pay over to the director of revenue all monies (moneys) collected by him as fees, taking two receipts therefor, one of which he shall immediately file with the director of revenue, and shall at the end of each quarter make out an itemized and accurate list of all fees in his office, in which list shall be itemized all fees collected by him and also all fees due his office which have not been paid, giving the name of the person or persons paying or owing the same, and turn the same over to the director of revenue, stating that he has been unable, after the exercise of diligence, to collect the part unpaid, said report to be verified by affidavit, and it shall be the duty of the director of revenue to cause the fees unpaid within one year from the date accrued to be collected by law.

"All magistrate fees received by the director of revenue shall be deposited by him with the state treasurer in a special fund to be denominated 'magistrate fund', and all moneys in said fund shall be used exclusively for the payment of salaries of magistrates, their clerks, deputies and employees; provided, however, that such salaries may also be paid from the general revenue of the state whenever either the balance in the magistrate fund or the appropriation from such fund is insufficient to pay such salaries."

There seems to be no exception requiring the clerk to pay over the five dollar filing fee to the Director of Revenue at the end of each month except as provided in Section 23a of the

same act, which deals with magistrates that are selected to fill offices created by order of the circuit court, and in such cases, the fee is required to be paid over to the county treasurer at the end of each month instead of the Director of Revenue. We assume this is true for the reason that such magistrates are paid by the county instead of the state. In view of the foregoing statute, unless there can be found some statutory provision requiring said five dollar filing fee to be transferred to the clerk of the magistrate court, magistrate or circuit court, as the case may be, where the cause may be sent upon a change of venue, then we must conclude that said fee is not to be transferred to another court with the case.

Section 76, page 789, Laws of Missouri 1945, authorizes a change of venue in civil cases for certain specific causes, and reads as follows:

"Either party shall be entitled to change of venue in any civil cause pending before a magistrate, if he shall, before the jury is sworn or the trial is commenced before the magistrate, file an affidavit that the magistrate is a material witness for him, without whose testimony he cannot safely proceed to trial, or that he is near of kin to either party, stating in what degree, or that he cannot have a fair and impartial trial before such magistrate on account of his bias or prejudice, or that he cannot have a fair trial in the county on account of bias and prejudice of the inhabitants of such county, which affidavit shall be made either by a party to a suit pending or by said party's agent or attorney."

Under Section 77, page 789, Laws of Missouri 1945, wherein an affidavit is filed requesting a change of venue, the magistrate must allow same, and it further directs said magistrate to immediately transmit all original papers and a transcript of his orders in the case to some competent magistrate, or, under certain circumstances, the cause shall be transferred to the circuit court. Said section reads:

"Upon the filing of the affidavit in due time, requesting change of venue, the magistrate must allow the change of venue

and enter an order accordingly, and immediately transmit all of the original papers and a transcript of all of his orders in the case to some competent magistrate in the county, if there be one, unless the party asking for a change of venue shall, in his affidavit, state that another magistrate in the county is a material witness for him without whose testimony he cannot safely proceed to trial, or that he is near of kin to either party, stating in what degree, in which case, or in the event there is no other magistrate in the county, the case shall be certified to the circuit court for trial as if originally filed in the circuit court, in which case the receiving court or magistrate shall be notified immediately by the magistrate granting the change of venue, by filing with the clerk of the circuit court or magistrate receiving the case on change of venue a certified copy of the order granting the change of venue, and upon receipt of such notice such magistrate or clerk of the circuit court to whom the change of venue is granted shall reset the case for trial on a day certain. If the change be allowed on account of bias or prejudice of the inhabitants of the county, all of the original papers and such transcript immediately shall be sent to a magistrate of some adjoining county for trial as herein above provided; provided, that when such affidavit for change of venue shall be filed, the magistrate shall have no further jurisdiction in the cause except to grant such change of venue."

Nowhere in either Section 76 or 77, supra, is the original filing fee of five dollars specifically required to be transmitted to the court receiving the cause upon a change of venue.

There is a well established maxim in law known as expressio unius est exclusio alterius, which means that where there is a statute prescribing that a thing shall be done in a particular manner it necessarily prohibits the doing of it in any other

manner. (See Lancaster v. Atchison County, 180 S.W. (2d) 706, 352 Mo. 1039. Also, Dietrich v. Jones, 53 S.W. (2d) 1059, 227 Mo. App. 365. The primary rule of statutory construction is to ascertain the lawmakers' intent from words used, if possible, and give it that effect. See Donnelly Garment Co. v. Keitel, 193 S.W. (2d) 577, 354 Mo. 1138. Also, State v. Ball, 171 S.W. (2d) 787.)

In the absence of any particular statute directing that the fee provided for in Section 23, supra, be transferred to the clerk of the magistrate court, magistrate or circuit court where the cause may be sent upon granting a change of venue, it certainly seems to have been the legislative intent that such fee should be delivered by the clerk to the Director of Revenue or the county treasurer, as the case may be, at the end of each month, and that said fee should not be transferred along with the case to the court receiving the cause upon change of venue.

#### CONCLUSION

Therefore, it is the opinion of this department that the five dollar filing fee required to be paid to the clerk of the magistrate court upon commencement of any proceedings shall be paid by said clerk to the Director of Revenue or the county treasurer, as the case may be, at the end of each month and shall not be transferred to the court receiving the cause by reason of a change of venue.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
Attorney General *JTB*

ARH:LR