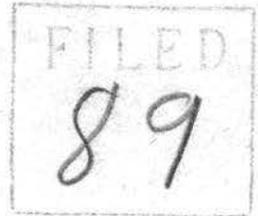


- MAGISTRATE COURTS: Cost of making out transcript of record
CHANGE OF VENUE: in change of venue to be charged after
such change of venue.



March 3, 1948

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Honorable Frank W. Tirrell
Judge of the Magistrate Court
Third District, St. Louis County
Maplewood, Missouri

Dear Judge Tirrell:

This will acknowledge receipt of your letter requesting an opinion from this department, which reads as follows:

"We would like to have you give us an opinion as to whether or not the Transcript Fees on a 'Change of Venue' are collectible at the time the application is presented. This is covered by Section 77, Senate Bill 207, of the 63rd General Assembly, in which it states: 'that all original papers and transcript shall be sent to the Magistrate in whose Court it is to be set.'

"In Senate Bill 333 of the 63rd General Assembly, Section 1, lines 13-14-15, it states: that fees, for copies, records, pleadings and instruments on file in the Court, shall be collected for this service.

"We have been charging for the transcript at the time application was filed, but it has been challenged, and the Attorney states it does not specify regarding the payment in Section 77. In looking into the revised statutes of 1939, Section 1067, it states: that the cost of transcript shall be charged to petitioner and shall not be taxed to the costs. And, in Section 1058 of the same, it states: that this section would be applicable to Courts of Record. Therefore, would these sections cover Magistrate Courts in this instance?"

The provisions of the law regarding change of venue in civil cases in the magistrate courts are found in the Laws of Missouri, 1945, page 765, Sections 76 through 80.

The precise question presented is whether the transcript fees which accrue in the changing of venue from one magistrate court to another or to the circuit court may be charged and collected at the time the application for such change of venue is filed.

It is provided that when the affidavit is filed 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 or circuit court. If the order is made, it is mandatory that said transcript of the record, together with the original papers, be transmitted to the proper magistrate or circuit court. *Patterson v. Yancey*, 97 Mo. App. 681, l.c. 697.

For all practical purposes, it will be the clerk of the magistrate court who makes out said transcript of the record. This is indicated by Section 1065, R.S. Mo. 1939, which requires the clerk of the court to make out a full transcript of the record and proceeding in the cause. Said statute is penal in nature, providing a penalty if the clerk fails to so perform. *Randol v. Garoutte*, 78 Mo. App. 609.

The responsibility for costs in a change of venue is specifically set out in Section 80. However, no mention is made as to when said costs, and particularly the transcript fees, should be charged and paid. Since it is mandatory for the transcript of the record to be immediately made up and transmitted to the proper court, this duty must be performed without primary regard for the immediate payment of the transcript fees.

Section 1068, R.S. Mo. 1939, provides that if the costs and expenses incurred in a change of venue are not paid within fifteen days after such change of venue, the clerk may make out a fee bill which may be collected by the sheriff. It is further provided by Section 1069, R.S. Mo. 1939, that the clerk may recover the amount of such fee bill by civil action. Said sections refer to courts of record and, we believe, are applicable to magistrate courts which are, of course, courts of record. Therefore, it is clear that said transcript fees are not required to be charged and paid at the time of application for change of venue but must be paid within fifteen days after such change of venue.

Honorable Frank W. Tirrell

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It is quite evident that there is no liability for the cost or expense of making out a transcript of the record in such proceeding until after such service has been rendered. Further, it is difficult to understand how the actual cost of such transcript of the record could be adequately computed before the same was completed.

Your attention is directed to the Laws of Missouri, 1945, page 488, which is the controlling law concerning fees which may be charged for certain services of the clerk of the magistrate court.

Conclusion.

The cost incurred in making out a transcript of the record in a change of venue proceeding in a civil case in the magistrate court should not be charged until after such change of venue.

Respectfully submitted,

DAVID DONNELLY
Assistant Attorney General

APPROVED:

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