

FEEES:
MAGISTRATE COURT:
SHERIFFS:
PROSECUTING ATTORNEYS:



1. In cases where a fine has been assessed against a defendant and the defendant is unable to pay the costs or fine or both, and serves out the fine in jail, or where a jail sentence is assessed, that the county is liable for the \$2.50 magistrate fee.
2. In situations such as are set forth in part 1 of this conclusion, the county would not be liable to pay the fee of the sheriff or the prosecuting attorney.

April 17, 1952

Honorable Samuel Semple
Prosecuting Attorney
Randolph County
Moberly, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion. You thus state your opinion request:

"This office would like to obtain an opinion from your office on fees due the magistrate court, the sheriff and the prosecuting attorney in misdemeanor cases in magistrate court. The cases that we have in question are those cases in which either a fine is assessed against the defendant and the defendant being unable to pay the fine or costs serves out the fine in jail, or in those cases where a jail sentence is assessed. In those situations, is the county liable for the payment of the magistrate fees of \$2.50 in each case which are in turn sent by the magistrate to the state of Missouri, and is the county liable to pay the sheriff's fees and the prosecuting attorney's fees in these cases where the sheriff and the prosecuting attorney are then required to turn around and turn the money back in to the county."

In regard to this matter we would first direct your attention to Section 550.030, RSMo 1949, which section reads as follows:

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"When the defendant is sentenced to imprisonment in the county jail, or to pay a fine, or both, and is unable to pay the costs, the county in which the indictment was found or information filed shall pay the costs, except such as were incurred on the part of the defendant."

It would seem to be clear that the above section means that the county is liable for the costs when the defendant is unable to pay the costs or the fine, as well as when he is able to pay the fine but not the costs, or where he is sentenced to imprisonment in jail.

We also note that "costs" as referred to in Section 550.030, supra, include the magistrate's fee, the sheriff's fee, and the fee of the prosecuting attorney.

Let us first consider payment of the magistrate's fee in this situation.

Part 2 of Section 483.610, RSMo 1949, states:

"In each criminal proceeding and in each preliminary hearing instituted in any magistrate court, a magistrate court fee of two dollars and fifty cents 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."

Parts 2, 3, and 4 of Section 483.615, RSMo 1949, state:

"2. Except as provided in section 483.620, 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

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moneys collected by him as fees, taking two receipts therefor, one of which he shall immediately file with the state treasurer and shall at the end of each month make out an itemized and accurate list of all fees collected by him, or by the magistrate, giving the name of the person or persons paying the same, and turn the same over to the director of revenue, said report to be verified by affidavit.

"3. On or before the thirty-first day of January of each year the clerk of the magistrate court shall file a verified report with the director of revenue showing all fees due and unpaid in his office in cases where the liability therefor has been finally determined and established during the preceding year, showing the name of the person or persons owing same and stating that he has been unable, after the exercise of diligence, to collect the same. The director of revenue shall collect such unpaid fees and shall have the same rights in connection with the judgment therefor as the prevailing party in the litigation.

"4. 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 and for the payment of the cost of any surety bonds furnished by a clerk or deputy clerk; 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."

Part 2 of Section 483.610, supra, fixes the magistrate fee at \$2.50 in a criminal case; part 2 of Section 483.615, supra, directs that such fee be paid to the state; and Section 550.030, supra, makes the county liable for costs in instances such as

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you present. It would therefore follow that the county would be liable for the \$2.50 magistrate fee which is to be paid to the state.

In regard to the payment of the sheriff's fee in such cases as we are considering, we direct your attention to Section 57.410, RSMo 1949, which section states:

"In all counties of the third and fourth classes, the sheriff shall charge and collect for and on behalf of the county every fee accruing to his office which arises out of his duties in connection with the investigation, arrest, prosecution, care, commitment and transportation of persons accused of or convicted of a criminal offense, except such criminal fees as are chargeable to the county. The sheriff may retain all fees collected by him in civil matters."

In view of the above section it would appear to be clear that where the county is liable to pay the costs that the sheriff shall not collect his fee.

In regard to the payment of the fee of the prosecuting attorney, we direct your attention to Section 56.340, RSMo 1949, which section states:

"The prosecuting attorney, in counties of the second, third and fourth classes, shall charge upon behalf of the county every fee that accrues in his office and receive the same, and at the end of each month, pay over to the county treasury all moneys collected by him as fees, taking two receipts therefor, one of which he will immediately file with the clerk of the county court, and shall at the same time make out an itemized and accurate list of all fees in his office which have been collected by him, and one of 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 county court, stating that he has been unable, after the exercise of diligence, to collect the part unpaid, said report to be verified

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by affidavit, and it shall be the duty of the county court to cause the fees unpaid to be collected by law, and to cause the same when collected to be turned over to the county treasury."

From the above section it would seem to be clear that in such situations as you present, the prosecuting attorney should not collect his fee, as it is his duty to collect on behalf of the county and not from the county.

CONCLUSION

It is the opinion of this department that:

1. In cases where a fine has been assessed against a defendant and the defendant is unable to pay the costs or fine or both, and serves out the fine in jail, or where a jail sentence is assessed, that the county is liable for the \$2.50 magistrate fee.

2. That in situations such as are set forth in part 1 of this conclusion, the county would not be liable to pay the fee of the sheriff or the prosecuting attorney.

Respectfully submitted,

HUGH P. WILLIAMSON
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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