

Ans. by letter

April 7, 1964

Honorable James G. Lauderdale
Prosecuting Attorney
Lafayette County
County Courthouse
Lexington, Missouri



Dear Mr. Lauderdale:

This will reply to your request concerning the propriety of certain deductions made by the Office of the Comptroller from criminal cost bills, partial copies of which were enclosed with your request. We will answer your letter by using the item numbers as they appear on the printed form of the cost bill:

Item 10: We have concluded that when a defendant pleads not guilty, an issue of fact is joined, irrespective of whether such plea is subsequently withdrawn. Hence, the 25¢ fee allowed for an issue of fact joined should be allowed in each case in which a plea of not guilty is entered. However, we add that we can find no statutory authority for Item 9 of the Bill of Costs, so that the 15¢ fee there specified should not be allowed under this item.

Item 18: In our opinion, only one fee may be allowed for entering judgment, inasmuch as there is only one judgment when a defendant is sentenced. It is, of course, true that the law provides for terms of court for both Lexington and Higginsville. However, we do not find any statute under which it is mandatory for the clerk to enter a copy of the judgment not only in the court in which it was rendered, but in the other court as well. Inasmuch as statutes which provide for fees are to be strictly construed, in the absence of any specific statutory requirement for a duplicate entry of a judgment, it is our opinion that only one fee may be charged for entering such judgment.

Item 30: It is our opinion that a fee may be charged for only one copy of the judgment and sentence for the use of the sheriff. This item has reference to the use of the judgment for official purposes in connection with the commitment of the prisoner. Even if the sheriff requires another copy in order to

April 7, 1964

collect his fee, there is no basis in the statute for charging either the State or the defendant the cost thereof. With respect to the number of words, the only legal charge which may be made is the charge of 10¢ per 100 words. Hence, an allowance of \$1.00 for a copy of the judgment and sentence would appear to this office to be adequate, absent any proof that the judgment and sentence in the particular case exceed 1,000 words, which is very unlikely.

Item 31: For the same reasons stated with respect to Item 30, only one charge may be made for certificate and seal to the copy of the judgment and sentence. Hence, the charge for a duplicate certificate and seal should not be allowed.

Item 33: Although the meaning of the reference in this item to "after allowance" is not clear, we have concluded that a fee may properly be allowed for two copies of the bill of costs at the rate of 10¢ per 100 words. However, inasmuch as the ordinary bill of costs does not exceed more than 500 words (and usually contains less than that number), an allowance of \$1.00 for the two copies would appear to be adequate in the absence of proof that the bill of costs actually contains more than 500 words. In determining the number of words in the bill of costs, none of the words on any numbered line of the printed form should be counted unless fees are chargeable with respect to the item of costs there listed. The printed form is used only for the convenience of all parties, and necessarily includes a number of items which are not chargeable in every case. It is also to be noted that under the statute the fee for Item 33 includes certificate and seal, which means that no charge may be made for the certificate and seal on the copies of the cost bill.

We trust that the foregoing will be sufficient to provide a guide for the circuit clerk in preparing future bills of costs.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

By
Joseph Nessenfeld
Assistant Attorney General

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cc: Mr. Bud Renn
Office of the Comptroller and
Budget Director