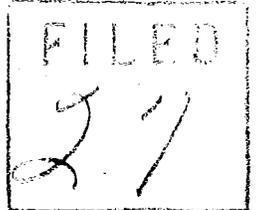


MAGISTRATE COURT: Where fine and costs are immediately
CRIMINAL COSTS: tendered upon plea of guilty or conviction, same should be received by the sheriff for distribution.

December 30, 1947



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Honorable C. E. Ernst
Prosecuting Attorney
Gentry County
Albany, Missouri

Dear Mr. Ernst:

This is in reply to your letter of recent date requesting an opinion from this department, which reads as follows:

"The Probate Judge and Magistrate of our county is somewhat uncertain about certain rulings from your office with reference to the collection of cost and fees including fines, by the sheriff. One ruling seems to hold that all fees and costs accruing in the Magistrate Court are to be collected by the sheriff and another that the sheriff is authorized to collect fees and cost including fines, only under execution.

"What they want to know is, when a defendant comes into the Magistrate Court, enters a plea of guilty and tenders the amount of the fine and cost, whether the Court turns the money to the office entitled to receive it, or whether he is required to turn the money to the sheriff and let the sheriff disburse it."

Reference is made to an opinion of this department to Honorable A. T. Horton, Judge of the Probate Court of Lincoln County, dated September 23, 1947, which holds that the sheriff in all counties, except counties of the first class, is the proper officer to collect and distribute all fines and costs with regard to criminal matters in the magistrate court and, further, that the sheriff cannot collect such fines and costs

according to a judgment until an execution is issued thereon. A copy of said opinion is enclosed herewith for your convenience.

An execution is a judicial writ issuing from the court where the judgment is rendered, directed to an officer thereof and running against the body or goods of a party by which the judgment of the court is enforced. Without such a writ, such officer cannot levy on the goods and chattels of the defendant for the amount of the fine and costs.

However, we are concerned here with the case where the defendant, on entering a plea of guilty or after a conviction in the magistrate court, immediately tenders the proper amount of the fine assessed and the costs which have accrued in the case. There is no need for an execution to issue on the judgment since the purpose of an execution is merely to enforce payment when such action is necessary. While it is not necessary for the officer in this case to collect the amount of the judgment under an execution, it does not follow that he has no function in this matter.

This department held in the Norton opinion that the sheriff in all counties, except counties of the first class, is the officer charged with collecting the judgment, turning the amount of the fine into the county treasury as provided in Section 3856.36, Mo. R.S.A., and distributing to the proper parties moneys collected in the nature of criminal costs. The fact that the amount of the judgment does not have to be collected under an execution does not relieve the sheriff from the duty of receiving the proper amount and distributing it to the proper parties. Section 11221, R.S. Mo. 1939, provides:

"The sheriffs of the several counties shall collect and account for all the fines, penalties, forfeitures and other sums of money, by whatever name designated, accruing to the state or any county in virtue of any order, judgment or decree of a court of record."

This section makes no distinction in the case where execution is issued and in the case where such execution is not necessary for the collection of such judgment.

Fines and costs which are tendered directly to the magistrate or the magistrate clerk should be turned over to the sheriff

for distribution. This conclusion is strengthened by the fact that there are no provisions in the laws creating magistrate courts which authorize or require the magistrate or magistrate clerk to collect and distribute fines and costs with regard to criminal matters in those courts. This duty is enjoined solely upon the sheriff.

Conclusion.

Therefore, it is the opinion of this department that in a criminal case in the magistrate court, in all counties except counties of the first class, where the defendant upon entering a plea of guilty or after having been adjudged guilty by the magistrate or a jury immediately tenders the proper amount of the fine assessed and the costs incurred, such fine and costs should be collected by the sheriff, or if received by the magistrate or magistrate clerk, should be turned over to the sheriff for distribution according to law.

Respectfully submitted,

DAVID DONNELLY
Assistant Attorney General

APPROVED:

J. W. TAYLOR
Attorney General

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Enc.