

MAGISTRATE COURTS: Where defendants are charged and tried jointly in the magistrate court, separate  
CRIMINAL COSTS: prosecuting attorney's fees are chargeable, but only one set of clerk's fees is chargeable.

April 2, 1948



4-16

Honorable H. Glenn Weber  
Judge of the Magistrate Court  
Jefferson County  
Hillsboro, Missouri

Dear Judge Weber:

This is in reply to your letter of recent date requesting the opinion of this department on the following question:

"Where two or more defendants are charged jointly in the same information and tried together for any alleged offense and found guilty or enter a plea, are full clerk's and Prosecuting Attorney's fees chargeable against the individual defendants as if charged and tried separately or does one set of fees apply to all defendants to the action?"

An analogous situation was presented in the case of In the Matter of Jerry Murphy and Jerry Spillane, 22 Mo. App. 476, decided by the St. Louis Court of Appeals. The facts there were as follows:

"\* \* \* They were jointly proceeded against by information for a misdemeanor, before a justice of the peace, were jointly tried before a jury, jointly convicted, and adjudged to pay a fine of twenty-five dollars and costs. They paid the fine and what they were advised were all the costs, including a single fee of five dollars for the prosecuting attorney. The justice of the peace had taxed a fee of ten dollars for the prosecuting attorney, or a fee of five dollars in respect of each defendant; and for the non-payment of the remaining five dollars,

he issued his warrant of commitment, under which the petitioners are now held. \* \* \*

The court made the following statement at pages 477 and 478:

"The question depends upon the meaning of the following clause in section 5596, of the Revised Statutes, prescribing the fees of prosecuting attorneys: 'For convictions in the circuit court, upon indictment, when the punishment assessed by the court, or jury, or justice, shall be fine, or imprisonment in the county jail, or both such fine and imprisonment, \$5.00.' The question in the narrowest form of statement is, whether the word 'conviction' in the above clause is to be interpreted as meaning a judgment, in favor of the state, in a criminal case, upon the merits, irrespective of the number of defendants against whom it is jointly rendered, or such a judgment in its operation against each of several defendants, rendered upon a single information, and after a single trial.

"I am of opinion that the former is the correct view of the meaning of the statute. \* \* \*

The court held there at page 479:

" \* \* \* The question clearly appears to be whether there was more than one prosecution, one trial, one verdict, one judgment. If there was, then the prosecuting attorney is entitled to a separate fee in each case; if there was not, then he is entitled to but one fee."

The Spillane case was decided in 1886. The following year the Legislature amended Section 5596 by expressly providing that prosecuting attorneys shall be allowed a fee for the conviction of every defendant. Section 5596, as amended, reads, in part, as follows:

" \* \* \* for the conviction of every defendant in the circuit court, upon indictment or information, or before a justice of the peace, upon information, when the punishment assessed by the court or jury or justice shall be fine or imprisonment in the county jail, or by both such fine and imprisonment, five dollars; for the conviction of every defendant in any case where the punishment assessed shall be by confinement in the penitentiary, except in cases of rape, arson, burglary, robbery, forgery or counterfeiting, ten dollars; for the conviction of every defendant of homicide, other than capital, or for offenses excepted in the last clause, twelve dollars and fifty cents; for the conviction of every defendant in a capital case, twenty-five dollars; for his services in all actions which it is or shall be made his duty, by law, to prosecute or defend, five dollars. \* \* \*"

(The above portion of Section 5596, Laws of Missouri, 1837, page 188, is embodied in substantially the same form in Section 13405, R.S. No. 1939.)

The amendment of 1837 was obviously enacted in the light of the Spillane decision and intended to entitle prosecuting attorneys to a fee for the conviction of every defendant rather than limiting them to such fee for each conviction regardless of how many defendants were joined in the prosecution.

However, we believe that the rule set out in the Spillane case is controlling on the question of clerk fees. It was further held in the case at page 480:

" \* \* \* the statute contemplates the payment of fees for actual services only. The payment of fees beyond this is illegal and is to be discountenanced. An officer who makes a journey to serve a writ upon two defendants at the same place is entitled to mileage in but one case, unless the statute provides otherwise, because he has performed but one journey. A clerk of a court of record, who enters a judgment against several

defendants is entitled to but one fee, because he has performed but one act of service. \* \* \*

The situation under consideration involves only one information, one trial, one verdict and one judgment, and presents a clear case under the above authority. Any reasoning which entitles the clerk to a duplication of fees would entitle the jury to double fees for serving at the trial and would allow witnesses more than one fee for testifying at the trial, all of which is clearly prohibited by law. The fees allowed clerks of courts possessing criminal jurisdiction for their services in criminal proceedings are provided in Section 13409, R.S. No. 1939. The terminology of that statute clearly entitles the clerk to only one fee for every indictment returned by a grand jury, one fee for taking and entering each verdict and one fee for entering a judgment. It is well settled that statutes relating to court costs must be strictly construed.

The foregoing statutes and authorities are, of course, equally as applicable to magistrate courts as to circuit courts.

Conclusion.

Therefore, it is the opinion of this department that where two or more defendants are charged jointly by the same information for a criminal offense in the magistrate court, and are tried together and found guilty or enter a plea together, the same fees are chargeable against said defendants jointly for the services of the clerk of the magistrate court as are chargeable against an individual defendant under the same circumstances. However, in such case separate fees for the services of the prosecuting attorney are chargeable to each defendant.

Respectfully submitted,

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APPROVED:

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