

FILE

Subject

Fees & Salaries  
Court Costs & Fees  
Court  
Small Claims Court

Copy to



STATE OF KANSAS

*Office of the Attorney General*

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February 7, 1974

Opinion No. 74-42

The Honorable Aline Funk  
Ottawa County Probate, County  
and Juvenile Judge  
Ottawa County Courthouse  
Minneapolis, Kansas 67467

Dear Judge Funk:

Your letter of July 20, 1973, has been referred to me for reply.

Your letter requests an opinion regarding the payment of fees in an action filed in the newly established Small Claims Court. The statutory provision governing the operation of the Small Claims Court is set forth in Chapter 239, 1973 Session Laws. You have appropriately indicated that Section 4 of the above cited statute provides that, "...the clerk of the court shall require from the plaintiff a deposit of five dollars (\$5), plus publication costs, if any, as security for costs in the action, . . ."

Question: In an action filed pursuant to the Small Claims Court Procedure Act may the law library fee and a judicial fee be assessed in addition to the \$5.00 filing fee?

Answer: K.S.A. 19-1322 requires the collection of a fee for the county library in all actions filed in the County Court. Additionally K.S.A. 28-113a requires the collection of a fee for the Judicial Council in all actions wherein the Judicial Council requests judges of the probate court to furnish complete and accurate detailed information with respect to cases disposed of or pending in their respective courts.

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Section 10 of the Small Claims Procedure Act states, "The costs of any action commenced in a court of limited jurisdiction under this act shall be taxed against the parties as in other actions in such court." While Section 4 of the act limits the amount of deposit which a plaintiff must place with the clerk, Section 4 does not limit the assessment of further costs against the plaintiff.

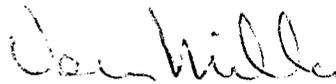
It is thus the opinion of this office that in all actions filed in your court, the library fee should be collected. I am uncertain as to the intentions of the Judicial Council in collecting information on actions filed in the Small Claims Court, and I would advise you to contact the Judicial Council and determine if you are going to be required to keep records of all actions filed in the Small Claims Court. If such a requirement is made, then the collection of the fee for reporting to the Judicial Council will be required in all actions filed in the Small Claims Court.

I would further indicate that the \$5 filing fee is a "deposit" on all costs that might be incurred in a small claims procedure action. If the plaintiff is unsuccessful in a small claims procedure action, any and all court costs incurred must be paid by the plaintiff if the court so orders even though such costs exceed \$5. Additionally, the court, of course, has powers to charge the defendant with any and all costs should the plaintiff prevail.

It is my belief that it was the intent of the Legislature to limit the costs of filing a small claims procedure action to \$5 with the exception of publication costs but the provisions of Section 4 of the act do not convey this intent. I am informed that a legislative committee is currently studying the amendment of Section 4 so as to remedy this drafting error.

I hope the above is in full response to your request. If I can be of further assistance, please advise.

Very truly yours,



VERN MILLER  
Attorney General

VM:JVF:gh