



STATE OF KANSAS

*Office of the Attorney General*

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Attorney General

July 23, 1974

Opinion No. 74- 245

TO: All County Attorneys

Inasmuch as this office has received numerous inquiries regarding the meaning and effect of Chapter 168 of the 1974 Session Laws of Kansas (Senate Bill No. 941), this opinion is submitted in an attempt to consolidate and answer any such requests. We would ask that you provide copies of this opinion to the clerk of your district court, to your sheriff, and to your county auditor.

The specific questions which have been raised are as follows:

1. To which courts does Senate Bill No. 941 apply?
2. Should the sheriffs of the several counties continue to charge the statutory fees for service of process, and if so, in which courts?
3. Does the \$40 "docket fee" prescribed for misdemeanors in the new Section 9 apply to traffic cases?
4. Is the "docket fee" prescribed in Section 3 for civil suits to be returned to a prevailing plaintiff and taxed as costs to the adverse party or parties?
5. Can the sheriffs of the several counties charge and collect fees for serving out-of-state or out-of-county process?
6. Does the \$40 fee prescribed in the new Section 9 for "forfeited recognizance" negate the \$10 prescription found in K.S.A. 1973 Supp. 8-5,127d.(c)?

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It appears that the answer to the first inquiry specified above will be dispositive of many of the following inquiries. We will attempt, however, to answer each question separately.

1. It is our opinion that the provisions of Senate Bill No. 941 apply and relate to the state's district courts.

We first note that Section 1 of the new legislation amends existing K.S.A. 28-170 which, by its express terms, applies to clerks of district courts. The amendments do not change these express provisions.

Section 2 provides simply for the collection of authorized fees from other counties or states and the payment of such fees collected into the local county treasury. As such, this section makes no change in the procedures required by the prior law. The only changes made herein apply to the filing, with the county auditor, of a "statement of all fees charged and not collected," and the retention of certain fees by the county attorney.

Section 3, by its express terms, also applies to the district courts, and in substance provides a new procedure whereby a "docketing fee" in the amount of \$35 is paid upon the filing of a new case. This, of course, changes the prior practice of requiring a \$25 "cost deposit" and correlates with the Section 1 amendments to K.S.A. 28-170.

Sections 4, 5, 6, 7 and 8 make certain changes in K.S.A. 1973 Supp. 60-2002, K.S.A. 60-2003, K.S.A. 1973 Supp. 60-2005, K.S.A. 60-2101 and K.S.A. 1973 Supp. 60-3005, respectively. We note that all of the amended sections are provisions of the Code of Civil Procedure which, of course, "governs the procedure in the district courts of Kansas." K.S.A. 60-201. [Emphasis supplied.]

Section 9 is a "new section" and would appear to replace K.S.A. 28-172, which is specifically repealed. Section 28-172 provided for taxation of court costs in criminal proceedings in "all counties." It would appear that both the prior and new sections apply to the district courts of this state for the reason that provisions are made therein for the assessment of costs in felony cases. Of course, district courts have exclusive felony jurisdiction. K.S.A. 1973 Supp. 22-2601.

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Although the Chapter 60 provisions regarding costs were amended, no changes were made in the Chapter 61 provisions dealing with costs in courts of limited jurisdiction. (See K.S.A. 1973 Supp. 61-2501, et seq.) While the schedule of district court fees found in K.S.A. 28-172 was specifically repealed, the schedule of probate court fees found in K.S.A. 28-171, and the schedule of fees found in K.S.A. 28-127 were not repealed. In view of the above considerations and authorities, the conclusion that the provisions of Senate Bill No. 941 apply only to costs and fees in the various district courts of this state is, therefore, fully justified.

2. It is our opinion that the sheriffs of the various counties of this state should continue to charge and collect mileage and other fees as set forth in K.S.A. 28-110 in all the courts of this state except the district courts. We find it significant that the Legislature did not repeal the provisions of K.S.A. 28-110. This section sets forth a schedule of fees to be charged by the sheriffs of all counties for various services. This fact, coupled with the considerations above discussed, seems clearly to indicate that the language found in Sections 3 and 9 of Senate Bill No. 941, that "no sheriff in this state shall charge any other court in this state a fee or mileage for serving any paper or process," applies only to state district courts. It is inconsistent and unreasonable that a Chapter 60 provision, dealing with civil procedure in district courts, would have application to other courts.

3. It is our opinion that the \$40 "docket fee" specified in Section 9 of Senate Bill No. 941 applies to all misdemeanor cases, including traffic offenses. Realizing that \$40 represents a rather substantial charge for costs in most traffic cases, we would point out that, as a practical matter, few, if any, such offenses will be processed in district court.

4. It is our opinion that the "docket fee" specified in Section 3 of Senate Bill No. 941 is to be treated as any other costs in a civil suit, and should be returned to a prevailing plaintiff unless otherwise ordered by the court. Section 3 seems to clearly treat the "docket fee" as costs in the usual sense of the word, and Section 4 retains the provisions of K.S.A. 1973 Supp. 60-2002 indicating that "the costs shall

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be allowed to the party in whose favor judgment is rendered" unless otherwise prescribed by statute or ordered by the court. Section 6 further supports this interpretation. This section provides that the state and its political subdivisions are exempt from paying the docket fees in civil actions. It is further provided, however, that if the state or one of its political subdivisions are required to pay the costs in any action, that "such costs shall include the amount of the docket fee."

5. It is our opinion that the sheriffs of the various counties may charge and collect fees for serving process from the courts of other states, as well as district courts of other counties. This would appear to be clearly authorized in Section 2 wherein it is provided:

"All of the officers and other persons herein mentioned shall collect from others than the county in which said offices are located all fees now authorized by law."

6. It is our opinion that the provisions of K.S.A. 1973 Supp. 8-5,127d.(c) (1974 Session Laws of Kansas, Chapter 33, Section 8-2107(c)), specifying that \$10 shall be regarded as court costs "in the event of the forfeiture of any of the bonds set forth" in such section, should take precedence over the general provisions of Senate Bill No. 941 prescribing a \$40 "docket fee" for "forfeited recognizance." It is, of course, the general rule of statutory construction that a specific provision will take precedence over a more general statement dealing with the same subject matter. The Legislature has addressed itself specifically to the question of court costs in the event of bond forfeitures in connection with violations of the Uniform Act Regulating Traffic on Highways.

We trust that the above opinion will sufficiently answer the various inquiries which we have received. Again, we would ask that you make available to your sheriffs, district court clerks and other persons charged with responsibilities under this act copies of this opinion.

Very truly yours,



VERN MILLER  
Attorney General

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