



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

May 12, 1978

ATTORNEY GENERAL OPINION NO. 78-165

Mr. Richard D. Shannon
Court Administrator
Wyandotte County Courthouse
Kansas City, Kansas 66101

Re: Courts--Fees--Crime Victim Reparations Act

Synopsis: The fee of one dollar required to be assessed in all civil and criminal cases under section 18 of 1978 House Bill No. 2163 is an unconstitutional exercise of the general revenue power of the state, in the guise of the assessment of court costs for the administration of the unified court system of this state. If the act were valid, however, the fee applies only to all cases filed on and after July 1, 1978, and applies to traffic cases.

* * *

Dear Mr. Shannon:

Section 18 of 1978 House Bill No. 2163 states in pertinent part thus:

"In addition to the docket fee prescribed by K.S.A. 60-2001 or 61-2501 or K.S.A. 1977 Supp. 28-172a, the district court shall assess, in each civil and criminal case filed in such court, a fee of one dollar (\$1), to be taxed as an additional cost of the case."

You inquire, first, whether the \$1.00 fee required by this statute must be assessed in traffic cases. As you point out, the

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prescribed fee is to be assessed in addition to the docket fee prescribed by K.S.A. 1977 Supp. 28-172a, subsection (b) of which prescribes the docket fee to be charged in

"actions involving the violation of any of the laws of this state regulating traffic on highways, the violation of any act declared a crime pursuant to chapter 32 of Kansas Statutes Annotated or the violation of any act declared a crime pursuant to article 8 of chapter 82a of the Kansas Statutes Annotated"

Thus, in my opinion, the additional one dollar fee required by this section, if valid, applies to traffic cases.

The bill becomes effective on July 1, 1978. You ask whether the \$1.00 fee shall be assessed in cases filed prior to that date in which costs remain unpaid, or whether it should be assessed only in cases filed on and after July 1, 1978. The one dollar fee is required to be assessed "in each civil and criminal case filed," under a law which becomes effective July 1, 1978. In my judgment, if the act is valid, the fee may be assessed only in cases filed on and after that date.

There is a serious question whether this fee constitutes a genuine court cost, or whether it is assessed as a general revenue measure, in the guise of court costs, to defray the costs and expenses of the Crime Victims Reparations Board, and awards made under the act. The proceeds of the fee are deposited in the state general fund, unlike the docket fee prescribed by K.S.A. 60-2001. No part of the one dollar fee is, on the face of the act, to be applied to the operation of the courts, although it is assessed as a part of the docket fee. At 71 Am.Jur.2d, *State and Local Taxation*, § 15, the writer states thus:

"The distinction between a fee and a tax is one that is not always observed with nicety in judicial decisions, but according to some authorities, any payment exacted by the state or its municipal subdivisions as a contribution toward the cost of maintaining governmental functions, where the special benefits derived from their performance is merged in the general benefit, is a tax."

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The distinction between a tax, or general revenue measure, and regulatory or license fees, has been observed in the past by the Kansas Supreme Court. See, e.g., *Panhandle Eastern Pipe Line Co. v. Fadely*, 183 Kan. 803, 332 P.2d 568 (1958) and *Watson v. City of Topeka*, 194 Kan. 585, 400 P.2d 689 (1965). In *Panhandle*, the plaintiff challenged two acts of the 1957 legislature, one transferring \$100,000 from the natural gas conservation fund, derived from fees assessed by the Kansas Corporation Commission from companies which it regulated to defray the costs of regulation, and another apportioning to the state general fund twenty per cent of all costs collected by the Commission pursuant to certain statutes. The measures were attacked, *inter alia*, as an attempt to raise revenue under the guise of the police power, and the state sought to justify the measures as a reimbursement to the state for assistance provided the Corporation Commission by other agencies. Despite the powerful presumption of validity which it customarily invokes, it found the measures facially unconstitutional, stating thus:

"Neither senate bill No. 425 nor senate bill No. 428 expressly declares that the amounts transferred and appropriated to the state general revenue fund are to be used to reimburse other departments and state agencies for indirect assistance rendered the commission, nor do the bills specifically appropriate the amounts for such purpose. Both bills, in clear terms, direct payment of the mentioned funds to the general fund of the state without any limitation, and the most reasonable inference to be drawn from both legislative acts is that the \$100,000 and the twenty per cent are to be used indiscriminately for all general expenses and obligations of the state. Such legislative acts, in spite of the presumption of validity . . . , show on their face that some part of the exaction is to be used for a purpose other than the legitimate one of regulation, and for that reason . . . [the enactments] are void." 183 Kan. at 807-808.

Exactly the same objection may be made here. The one dollar fee required by section 18 of 1978 House Bill No. 2163 is apportioned to the state general fund without limitation, to be applied to the general costs and expenses of the operation of state government. It is apparent that the fee is assessed, however, as a source


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of revenue to defray the costs of operation of the Crime Victim Reparations Board, for the title of the bill describes the measure in its entirety thus:

"AN ACT providing for reparations for certain economic losses resulting from certain criminal conduct."

From the bill itself, there is no apparent connection between the powers, duties and responsibilities of the Crime Victim Reparations Board established thereunder, and the operation of the unified court system of this state. In my opinion, section 18 of 1978 House Bill 2163 is a general revenue measure, assessing a one dollar fee as a docket fee or court cost which is to be applied to purposes entirely unrelated to the administration of the courts of this state. Accordingly, in my judgment, section 18 provides no lawful authority for the collection of this fee by the clerks of the district courts of this state.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. James R. James
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