



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89-17

Howard Schwartz  
Judicial Administrator  
Kansas Judicial Center  
301 W. 10th  
Topeka, Kansas. 66612-1507

Re: Fees and Salaries--Fees in All Counties and  
Salaries in Certain Counties--Court Fees in  
Criminal Actions

Synopsis: Whether a traffic related offense which is  
classified as a misdemeanor should be considered a  
"misdemeanor" or a "law regulating traffic" for  
purposes of assessing the correct docket fee under  
K.S.A. 1988 Supp. 28-172a must be determined on a  
case-by-case basis taking into consideration the  
amount of time and effort typically required to  
prosecute such an offense. Cited herein: K.S.A.  
20-362; K.S.A. 1988 Supp. 28-172a; L. 1984, ch. 39,  
§1; L. 1978, ch. 108, §§3, 9; L. 1976, ch. 163, §28.

\* \* \*

Dear Mr. Schwartz:

As Judicial Administrator, you request our opinion regarding  
the assessment of docket fees pursuant to K.S.A. 1988 Supp.  
28-172a. Specifically you question whether certain  
misdemeanor traffic related offenses should be deemed  
misdemeanors or "laws regulating traffic on highways" for  
purposes of charging the correct docket fee.

K.S.A. 1988 Supp. 28-172a provides in part as follows:

"(a) Except as otherwise provided in this section, whenever the prosecuting witness or defendant is adjudged to pay the costs in a criminal proceeding in any county, a docket fee shall be taxed as follows:

Murder or manslaughter . . . . .	\$149
Other felony . . . . .	119
<u>Misdemeanor . . . . .</u>	<u>89</u>
<u>Forfeited recognizance . . . . .</u>	<u>49</u>
Appeals from other courts . . . . .	49

"(b) In actions involving the violation of any of the laws of this state regulating traffic on highways (including those listed in subsection (c) of K.S.A. 1986 Supp. 8-2118 and amendments thereto), any act declared a crime pursuant to the statutes contained in chapter 32 of Kansas Statutes Annotated and amendments thereto or any act declared a crime pursuant to the statutes contained in article 8 of chapter 82a of the Kansas Statutes Annotated and amendments thereto, whenever the prosecuting witness or defendant is adjudged to pay the costs in the action, a docket fee of \$29 shall be charged. When an action is disposed of under subsections (a) and (b) of K.S.A. 1986 Supp. 8-2118 and amendments thereto, whether by mail or in person, the docket fee to be paid as court costs shall be \$29." (Emphasis added).

The phrase "laws of this state regulating traffic on highways" is not specifically defined in the statutes. In Attorney General Opinion No. 78-387 Attorney General Schneider was asked to interpret K.S.A. 1977 Supp. 8-2106 which contains a similar phrase. He opined that the language serves to include any traffic offense whether it be codified in Chapter 8 of the Kansas Statutes Annotated or elsewhere. Further, our review of the legislative history reveals that this phrase was added to the statute in 1976, eight years prior to the enactment which created the separate category of "traffic infractions," thus indicating that the language does not refer to traffic infractions alone. See L. 1976, ch. 163, §28; Minutes of the Senate Committee on Judiciary, March 31, 1976, attachment;

L. 1984, ch. 39, §1; Minutes of the Senate and House Committees on Transportation, January 25, 1984, March 21, 1984.

Since the language itself is of little guidance, we must attempt to determine the legislature's intent behind assessing a lesser cost for certain traffic related offenses. The Kansas Court of Appeals has held that the docket fee imposed pursuant to K.S.A. 1988 Supp. 28-172a is not a part of the penalty associated with the commission of a particular offense. State v. Dean, 12 Kan. App.2d 31, 323 (1987). We must therefore assume that the docket fee does not necessarily reflect the severity of the offense. Instead, we believe the amount of the docket fee is intended to reflect the costs of processing a particular offense. The fact that the bulk of each fee collected has historically been placed in a general fund enabling its usage to help defray the costs incurred in prosecuting offenses supports this conclusion. See L. 1978, ch. 108, §9(b); L. 1978, ch. 108, §3; K.S.A. 20-362(g); State v. Shannon, 194 Kan. 258, 263 (1965); State v. Thompson, 188 Kan. 171, 177, 178 (1961); State v. Dean, 12 Kan.App.2d at 323. Thus, the key is not whether the traffic related offense is classified as a misdemeanor or traffic infraction, but whether processing requires the same degree of attention as other misdemeanors, i.e. is the offense placed on the traffic docket or the criminal docket; does the law enforcement officer typically issue a notice to appear or is the alleged offender arrested; how difficult is the type of crime to try; etc. (Note that the charge is the same whether the alleged offender appears in person or pleads guilty or not contest through use of the mail, so whether the offense actually is tried is no longer a factor. Compare L. 1976, ch. 163, §27.) Determining the correct docket fee to charge will thus require a case-by-case analysis using the above-listed factors and any others which reflect the costs (not otherwise provided for) of prosecuting similar offenses.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Julene L. Miller  
Deputy Attorney General