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Courts
Small Claims



STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

July 2, 1974

Opinion No. 74- 216

Honorable Charles J. Sell
Judge, Labette County
Probate, Juvenile & County Courts
Labette County Court House
Oswego, Kansas 67356

Dear Judge Sell:

You request an opinion regarding the recently enacted amendment to the small claims procedure act, K.S.A. 1973 Supp. 61-2701, et seq. You desire an interpretation of the new language included in 61-2704 relating to a five dollar (\$5.00) docket fee.

Specifically, you inquire whether in an action filed pursuant to the small claims procedure act any costs in addition to the five dollar (\$5.00) docket fee may be assessed.

House Bill 2014 amends K.S.A. 1973 Supp. 61-2704 to read in pertinent part:

"Upon the filing of plaintiff's small claim, the clerk of the court shall require from the plaintiff a docket fee of five dollars (\$5.00), unless for good cause shown the judge shall waive such requirement. Said docket fee shall be the only costs required in an action seeking recovery of a small claim." (Emphasis supplied.)

The last sentence commands particular attention. It declares plainly and without equivocation that the five dollar (\$5.00) docket fee will be the sole cost required of a party seeking recovery under the act. Kansas courts have held repeatedly that where the language of a statute is clear and unambiguous, no room remains for interpretation. E.g., In Re Jones' Estate, 179 Kan. 744, 298 P.2d 230; Henre v. Bd. of Ed. of Kansas City, 201 Kan. 251, 440 P.2d 606; Phillips v. Vieux, 210 Kan. 612, 504 P.2d 196.

The language presented by 61-2704, as amended, is precise and clearly drawn. Had the Legislature desired the docket fee to be merely one of several costs involved in a small claims action, or to be merely an initial security deposit, it was certainly capable of expressing such a desire. It did not do so. Rather, it amended out previously existing language which required a five dollar (\$5.00) deposit as security for costs. In addition, it inserted into 61-2704 a quite explicit new sentence: "Said docket fee shall be the only costs required in an action seeking recovery of a small claim." (Emphasis supplied.) It is difficult to imagine a more lucid directive. Such a plain and obvious expression of legislative intent must control.

This conclusion is buttressed by the general statutory scheme of the small claims procedure act. K.S.A. 1973 Supp. 61-2702 requires that:

"Except as otherwise specifically provided or where a different or contrary provision is included in this act, the code of civil procedure before courts of limited jurisdiction shall be applicable to the processing of small claims and judgments under this act."

K.S.A. 1973 Supp. 61-2710 likewise directs that:

"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."

The pertinent sections of the code of civil procedure before courts of limited jurisdiction are K.S.A. 1973 Supp. 61-2501 through 61-2503. These sections require that security for costs, taxation of costs and items allowable as costs shall be determined by reference to the indicated provisions of the general code of civil procedure: K.S.A. 1973 Supp. 60-2001(b) and (c), 60-2002 and 60-2003. These sections were

amended by Senate Bill 941 enacted by the 1974 Legislature. They serve to define the term "docket fee", which is nowhere defined within the small claims procedure act itself, and to further focus the meaning of 61-2704.

K.S.A. 60-2001(c), as amended, states that:

"The docket fee shall be the only costs assessed in each case for reimbursement for services of the clerk of the district court and the sheriff. Any costs assessed for statutory fees for the stenographer, judge's retirement and law library and the bar docket fee shall be deducted from the docket fee, and the balance of such fee in each case shall be paid to the county treasurer for services of the clerk and sheriff."

It is true that 60-2001(d), another new provision, authorizes the amendment of additional court costs. However, this subsection is inapplicable to a small claims action, since 61-2501(b) makes no reference to 60-2001(d). Also, the requirement of 61-2704 that the five dollar (\$5.00) docket fee be the only cost required in a small claims action is a specific and contrary provision of the sort given controlling effect by the previously quoted language in 61-2702.

It should be mentioned that 60-2003 has been amended to list the docket fee as an item which may be included in costs. K.S.A. 60-2002 continues to provide, as previously, that unless otherwise provided by statute, or by order of the court, costs shall be allowed to the party in whose favor judgment is rendered. Thus, your misgiving over the application of K.S.A. 61-2710 is laid to rest. The cost referred to in K.S.A. 61-2710 is the docket fee; it may be assessed against the unsuccessful litigant.

It appears clear that costs incurred over and above the five dollar (\$5.00) docket fee must be borne by the county. This may present an additional financial burden to the county. A statute, however, is to be construed in accord with its clear and unequivocal provisions; the remedy for inconveniences is a matter of legislative consideration. State, ex rel. Bradley v. Board of County Com'rs of Johnson County, 180 Kan. 168, 302 P.2d 542.

Hon. Charles J. Sell
July 2, 1974
Page 4

In summary, then, it is the opinion of this office that in an action filed under the small claims procedure act absolutely no costs in addition to the five dollar (\$5.00) docket fee may be required.

If you should have further questions, please do not hesitate to call upon us.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Vern Miller".

VERN MILLER
Attorney General

LWB:sm