



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

January 3, 1978

ATTORNEY GENERAL OPINION NO. 78- 2

Mr. John C. Johnson
Marion County Attorney
Marion County Courthouse
Marion, Kansas 66861

Re: Courts--Clerk--Fees

Synopsis: No docket or other fee should be assessed for the filing of a complaint or order pursuant to K.S.A. 17-4759(d) with the clerk of the district court.

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Dear Mr. Johnson:

K.S.A. 17-4759 provides that cities may adopt ordinances relating to the repair, closing, demolition or repair of structures which are found to be unsafe, insanitary, dangerous or inimical to the residents of the city. Subsection (d) provides for the service of complaints or orders issued by a public officer in the enforcement of such ordinances. In addition to specifying the modes of service, it states thus:

"A copy of such complaint or order shall also be filed with the clerk of the district court of the county in which the structure is located and such filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law."

The question is raised whether the clerk of the district court is authorized to charge a docket fee for filing this notice of complaint. K.S.A. 60-2001(a) states thus:

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"Except as otherwise provided by law, no case shall be filed or docketed in the district court, whether original or appealed, without payment of a docket fee in the amount of thirty-five (\$35) to the clerk of the district court."

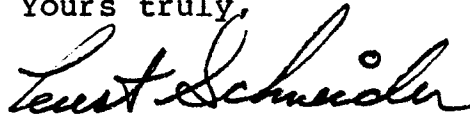
K.S.A. 60-2005 states in pertinent part thus:

"[A]ll cities . . . are hereby exempt in any civil action in which such . . . city . . . is involved, from depositing court costs or paying docket fees prescribed by any other law of this state. . . ."

It goes on to provide, however, that if costs are assessed against such city, such costs shall include the prescribed docket fee and any additional costs incurred in the action.

The complaint or order to which (d) refers does not appear to be a pleading which commences any litigation. Although the subsection refers disjunctively both to a complaint and a notice, the term "complaint" does not appear to be used to describe the initial pleading in either a civil or criminal action, but rather an official notification of the defects or deficiencies which have been found by the officer. It is not a document to which any responsive pleading is required or called for under the act. The purpose of the filing, according to the language quoted above, appears to be to provide notice by virtue of the filing and pendency, rather than to commence litigation. Thus, the docket fee required by K.S.A. 60-2001(a) is inapplicable to any such complaint or order which is filed merely as notification, and not as the initial pleading in a judicial proceeding. In addition, I can find no other provision which prescribes a fee which would be applicable to such document. Thus, in my judgment, the clerk is not authorized to charge any fee for the filing of a complaint or order under K.S.A. 17-4759(d).

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj