



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 13, 1978

ATTORNEY GENERAL OPINION NO. 78-188

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

Re: Courts--Fees--Validity

Synopsis: The fifty cent fee prescribed by K.S.A. 1977 Supp. 28-170a and the assessment authorized by section 9 of 1978 House Bill 3129 are not invalid for any of the reasons set forth in Opinion No. 78-165.

* * *

Dear Mr. Shannon:

In Opinion No. 78-165, we concluded that the additional fee of one dollar authorized by section 18 thereof to be assessed in addition to the docket fee prescribed by K.S.A. 60-2001, 61-2501 or K.S.A. 1977 Supp. 28-172a, to be credited to the state general fund, constituted an unlawful exercise of the general revenue power of the state in the guise of assessment of court costs for the administration of the unified court system of this state.

This opinion prompts your further inquiry concerning two additional fees, that of fifty cents fixed by K.S.A. 1977 Supp. 28-170a, and the monies authorized to be assessed by section 9 of 1978 House Bill 3129.

K.S.A. 1977 Supp. 28-170a(a) provides in pertinent part thus:

"There is hereby established a prosecuting attorneys' training fund. The clerk

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of the district court shall charge a fee of fifty cents (50¢) in each criminal case, to be deducted from the docket fee as provided in K.S.A. 1977 Supp. 28-172a, and shall charge a fee of fifty cents (50¢) as additional costs in each juvenile and mental illness action as provided by subsection (c) of K.S.A. 1977 Supp. 28-170."

Subsection (b) directs that the prosecuting attorney's training fund "shall be used exclusively for the training of personnel in such attorney's office and costs related thereto. K.S.A. 1977 Supp. 28-172a(c) provides in pertinent part thus:

"Statutory charges for judges' retirement, law library, the prosecuting attorneys' training fund and the bar docket fee shall be paid from the docket fee, and the balances of such fee shall be paid to the county general fund for reimbursement for the services of the clerk and sheriff."

The fifty cent fee is assessed as a part of the docket fee, which is presumptively to be applied to defray the costs of the administration of justice incurred by the judicial department, or as reimbursement to the county for the services of the clerk and the sheriff to the courts. Here, the proceeds of the fifty cent fee are diverted to defray the costs of the training of county and district attorneys. However, the fee is assessed in only those cases, *i.e.*, criminal prosecutions, and juvenile and mental illness cases, in which the county and district attorneys play a statutory role. The circumstances in which the fee is collected thus bears a substantial relationship to the use of those funds, *i.e.*, for the training of those officials. In these circumstances, it is difficult to conclude that the fifty cent fee constitutes a use of the general taxing power in the guise of a docket fee. The proceeds of the fifty cent fee are not applied broadly and indiscriminately to general governmental functions, but only and specifically to the training of those prosecutorial officers whose statutory duties include the representation of the state in the cases in which the fee is assessed.

You inquire, secondly, concerning the assessment authorized by section 9 of 1978 House Bill 3129, which provides in part thus:

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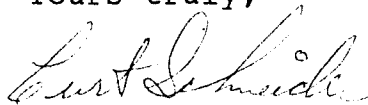
"(a) Whenever an officer of any court of this state or any municipal court shall impose a fine or order a bail forfeiture as a penalty for a violation of any of the laws of this state, ordinances of a city or resolutions of a county, such officer shall also impose and collect an assessment in addition to such fine or forfeiture. Such officer shall remit all moneys received from such assessments to the state treasurer at least monthly. Upon receipt thereof, the state treasurer shall deposit the entire amount in the state treasury and credit the same to the law enforcement training center fund created by this act."

Subsection (b) specifies the amounts of the assessments to be imposed. Use of the fund is specified by section 11 of the bill. It is to be applied to reimbursement of cities and counties for the costs of temporary replacement of law enforcement officers while attending the training center or certified training schools, to defray the cost of operation of the training center, and for grants to certified training schools to defray the cost of operation thereof.

Clearly, it is within the power of the legislature to fix the amounts of fines which are assessed for offenses brought before the courts of the state, and to prescribe the uses to which the proceeds of such fines shall be applied. In section 9 of House Bill 3129, rather than prescribe the fines for particular offenses, it has required that in addition to the fine imposed by the court, an additional sum shall also be assessed as a penalty, and directed the disposition of that sum. The sum to be assessed pursuant to section 9 is not a fee but a fine, and the constraints against the use of fee provisions as a general revenue source are largely inapplicable, in my judgment, to provisions for the assessment of fines and the disposition of the proceeds thereof.

Thus, in my opinion, the fifty cent fee prescribed by K.S.A. 1977 Supp. 28-170a and the assessment authorized by section 9 of 1978 House Bill 3129 are not invalid for any of the reasons set forth in Opinion No. 78-165.

Yours truly,



CURT T. SCHNEIDER
Attorney General