

CIRCUIT CLERKS; Fees in criminal cases for making transcript.

June 23rd, 1933



Hon. Forrest Smith,
State Auditor,
Jefferson City, Missouri.

Dear Sir:

We received your letter of June 16th requesting an opinion upon the following matter:

" We would be pleased to have the opinion of the Attorney General as to what charge a Circuit Clerk is entitled to make for preparing transcript to the Supreme Court where a defendant appeals as a poor person in a criminal case.

Sec. 11787, R. S. Mo. 1929, which is the only statute authorizing Circuit Clerks to tax any fee in a criminal case for themselves, provides: 'For transcripts to the supreme court, for every hundred words10'. The question is as to the meaning of this word 'transcript'. Does it mean only the record proper or does it also include a copy of the bill of exceptions for which the Clerk may charge 10¢ per hundred words, even though he actually makes no copy of such bill of exceptions (the same being furnished to him gratuitously by the court stenographer)? "

In capital cases the granting of an appeal automatically stays the execution of the sentence. Section 3742. In all other cases where an appeal is taken, it is necessary for the Court to make an order staying the execution of the judgment, and in such cases the provisions of Section 3757 R. S. 1929 govern the mode of procedure. This Section is as follows:

"SEC. 3757. WHERE APPEAL DOES NOT OPERATE AS A STAY. When the appeal or writ of error does not operate as a stay of proceedings, such transcript shall be made out, certified and returned, on the application of the appellant or plaintiff in error, as in civil cases, except that the costs of the transcript shall not be required in advance."

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Since the mode applicable in civil cases applies to such appeals, we will examine the statutes with reference thereto to ascertain what fees the clerk is entitled to charge.

Section 11785 R. S. 1929 provides that the circuit clerk is entitled to charge certain fees, namely 10¢ per hundred words for "making transcripts for the supreme court". Section 11722 specifically provides certain compensation in the way of fees to be paid to the court reporter for making a transcript of his notes in cases that are appealed. Section 1033 provides that when an appeal is granted, the clerk shall

"without delay make out and send to the clerk of such appellate court a complete copy of the record entry of judgment or decree appealed from and the order granting the appeal, or in lieu thereof, if the appellant or plaintiff in error shall direct, a perfect transcript of the record and proceedings in the cause."

Section 1836 provides that the clerk shall cause the bill of exceptions to be written out at full length unless the same has previously been done. Section 1838 provides that in making out transcripts of records, except on writs of error, the bills of exceptions shall not be inserted unless specifically requested by the applicant therefor.

From the above and foregoing statutes, it is the opinion of this office that the term "transcript" as used in Section 11787, R. S. 1929 means that part of the record and proceedings in any case ^{made} ~~set~~ by the circuit clerk, exclusive of the bill of exceptions. Where the court reporter has made out a bill of exceptions and filed a copy thereof in the office of the circuit clerk, the circuit clerk is not entitled to make any charge under the provisions of Section 11787 for the words and figures contained in this bill of exceptions as prepared by the court reporter.

Respectfully submitted,

FRANKLIN E. REAGAN,
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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