

OPINION
60-44

May 17, 1960 (OPINION)

COUNTIES

RE: Clerk of District Court - Fees

This is in reply to your request for an opinion whether or not a filing fee of seven dollars and fifty cents is required under section 11-1704 where an appeal is taken from a justice court to the district court in a criminal case.

Under section 33-1240 it is observed that criminal case appealed from the justice court to the district court is to be tried "anew" regardless of any ruling or decision of the justice. Any defense available to the defendant in justice court will also be available to him in the district court.

It is further observed that under section 33-1239 that the justice within five days after an appeal is taken is to transmit to the clerk of district court a certified copy of his docket and all papers relating to the case as on appeal in a civil action. If he fails to do so he may be compelled to do so. The trial is then placed on the calendar of the district court. The defendant is not required to file any instrument with clerk of court in connection with his appeal. Inasmuch that the trial is anew and is considered in the same light as if the action had been initially started in district court it would be considered the same as if the action were originally filed in district court.

In district court no fee is exacted from a defendant in filing a criminal charge against him. The costs of the trial are assessed against the defendant if he is found guilty. These costs are to defray in part the cost and expense involved in the trial. In civil actions the cost generally is in favor of the prevailing party. Such costs are limited by statute. The costs in a criminal action are not governed by the same statutes and are in the form of reimbursement to the government for its expenses in connection with the trial.

It is also observed that under section 33-1240 in speaking of appeals to the district court it is provided that:

. . . . In other respects, the proceedings shall be the same as in criminal actions originally commenced in the district court and judgment shall be rendered and carried into effect accordingly."

Thus it would appear that in an action originally begun in justice court for the violation of a state law and appealed from such justice court to the district court, no filing fee need be paid to enter such criminal case on the docket. An appeal from the justice court to the

district court in a civil matter is of a different nature and the regular filing fee is to be charged.

It is therefore our opinion that in an appeal from the justice court to the district court in a criminal action, wherein it is alleged that a state law has been violated, no filing fee is required to be paid before the case is entered on the docket of the district court for trial.

We might also advise that no fees are charged for filing action under sections 60-0410, 24-0514, 24-0125 and 52-0632.

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