

IN THE SUPREME COURT OF THE STATE OF KANSAS
OFFICE OF JUDICIAL ADMINISTRATOR

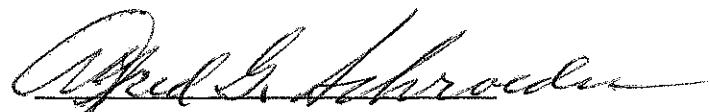
Re: Victims Reparation Fee
Laws of 1978, Chapter 130,
Section 18

Administrative Order No. 6

The administrative judges are directed to honor Attorney General's Opinion No. 78-165 dated May 12, 1978 a copy of which is attached hereto. The clerks of the courts shall be directed not to collect the Victims Reparation Fee specified in Laws of 1978, Chapter 130, Section 18 until further order of this court.

The office of judicial administrator is directed to revise the clerks manual accordingly.

BY ORDER OF THE COURT this 28th day of June, 1978.


Alfred G. Schroeder
Chief Justice

FILED

JUN 29 1978

LEWIS C. CARTER
CLERK APPELLATE COURTS



cc mailed to admin. judges
Dist. Ct. Clerks & Ct. Administrators. 6-25-78



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

May 12, 1978

ATTORNEY GENERAL OPINION NO. 78-165

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

Re: Courts--Fees--Crime Victim Reparations Act

Synopsis: The fee of one dollar required to be assessed in all civil and criminal cases under section 18 of 1978 House Bill No. 2163 is an unconstitutional exercise of the general revenue power of the state, in the guise of the assessment of court costs for the administration of the unified court system of this state. If the act were valid, however, the fee applies only to all cases filed on and after July 1, 1978, and applies to traffic cases.

* * *

Dear Mr. Shannon:

Section 18 of 1978 House Bill No. 2163 states in pertinent part thus:

"In addition to the docket fee prescribed by K.S.A. 60-2001 or 61-2501 or K.S.A. 1977 Supp. 28-172a, the district court shall assess, in each civil and criminal case filed in such court, a fee of one dollar (\$1), to be taxed as an additional cost of the case."

You inquire, first, whether the \$1.00 fee required by this statute must be assessed in traffic cases. As you point out, the

Mr. Richard D. Shannon
Page Two
May 12, 1978

prescribed fee is to be assessed in addition to the docket fee prescribed by K.S.A. 1977 Supp. 28-172a, subsection (b) of which prescribes the docket fee to be charged in

"actions involving the violation of any of the laws of this state regulating traffic on highways, the violation of any act declared a crime pursuant to chapter 32 of Kansas Statutes Annotated or the violation of any act declared a crime pursuant to article 8 of chapter 82a of the Kansas Statutes Annotated"

Thus, in my opinion, the additional one dollar fee required by this section, if valid, applies to traffic cases.

The bill becomes effective on July 1, 1978. You ask whether the \$1.00 fee shall be assessed in cases filed prior to that date in which costs remain unpaid, or whether it should be assessed only in cases filed on and after July 1, 1978. The one dollar fee is required to be assessed "in each civil and criminal case filed," under a law which becomes effective July 1, 1978. In my judgment, if the act is valid, the fee may be assessed only in cases filed on and after that date.

There is a serious question whether this fee constitutes a genuine court cost, or whether it is assessed as a general revenue measure, in the guise of court costs, to defray the costs and expenses of the Crime Victims Reparations Board, and awards made under the act. The proceeds of the fee are deposited in the state general fund, unlike the docket fee prescribed by K.S.A. 60-2001. No part of the one dollar fee is, on the face of the act, to be applied to the operation of the courts, although it is assessed as a part of the docket fee. At 71 Am.Jur.2d, *State and Local Taxation*, § 15, the writer states thus:

"The distinction between a fee and a tax is one that is not always observed with nicety in judicial decisions, but according to some authorities, any payment exacted by the state or its municipal subdivisions as a contribution toward the cost of maintaining governmental functions, where the special benefits derived from their performance is merged in the general benefit, is a tax."

Mr. Richard D. Shannon
Page Three
May 12, 1978

The distinction between a tax, or general revenue measure, and regulatory or license fees, has been observed in the past by the Kansas Supreme Court. See, e.g., *Panhandle Eastern Pipe Line Co. v. Fadely*, 183 Kan. 803, 332 P.2d 568 (1958) and *Watson v. City of Topeka*, 194 Kan. 585, 400 P.2d 689 (1965). In *Panhandle*, the plaintiff challenged two acts of the 1957 legislature, one transferring \$100,000 from the natural gas conservation fund, derived from fees assessed by the Kansas Corporation Commission from companies which it regulated to defray the costs of regulation, and another apportioning to the state general fund twenty per cent of all costs collected by the Commission pursuant to certain statutes. The measures were attacked, *inter alia*, as an attempt to raise revenue under the guise of the police power, and the state sought to justify the measures as a reimbursement to the state for assistance provided the Corporation Commission by other agencies. Despite the powerful presumption of validity which it customarily invokes, it found the measures facially unconstitutional, stating thus:

"Neither senate bill No. 425 nor senate bill No. 428 expressly declares that the amounts transferred and appropriated to the state general revenue fund are to be used to reimburse other departments and state agencies for indirect assistance rendered the commission, nor do the bills specifically appropriate the amounts for such purpose. Both bills, in clear terms, direct payment of the mentioned funds to the general fund of the state without any limitation, and the most reasonable inference to be drawn from both legislative acts is that the \$100,000 and the twenty per cent are to be used indiscriminately for all general expenses and obligations of the state. Such legislative acts, in spite of the presumption of validity . . . , show on their face that some part of the exaction is to be used for a purpose other than the legitimate one of regulation, and for that reason . . . [the enactments] are void." 183 Kan. at 807-808.

Exactly the same objection may be made here. The one dollar fee required by section 18 of 1978 House Bill No. 2163 is apportioned to the state general fund without limitation, to be applied to the general costs and expenses of the operation of state government. It is apparent that the fee is assessed, however, as a source

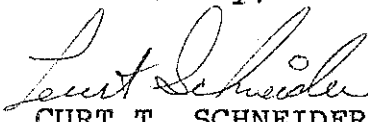
Mr. Richard D. Shannon
Page Four
May 12, 1978

of revenue to defray the costs of operation of the Crime Victim Reparations Board, for the title of the bill describes the measure in its entirety thus:

"AN ACT providing for reparations for certain economic losses resulting from certain criminal conduct."

From the bill itself, there is no apparent connection between the powers, duties and responsibilities of the Crime Victim Reparations Board established thereunder, and the operation of the unified court system of this state. In my opinion, section 18 of 1978 House Bill 2163 is a general revenue measure, assessing a one dollar fee as a docket fee or court cost which is to be applied to purposes entirely unrelated to the administration of the courts of this state. Accordingly, in my judgment, section 18 provides no lawful authority for the collection of this fee by the clerks of the district courts of this state.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. James R. James
Judicial Administrator
Kansas Supreme Court
4th Floor - State Capitol
Topeka, Kansas 66612

June 29, 1978

TO: JAMES R. JAMES

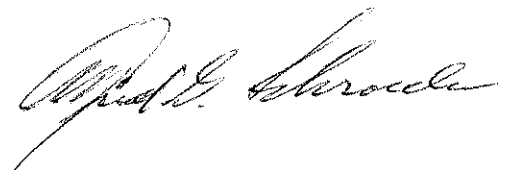
FROM: CHIEF JUSTICE SCHROEDER

Re: Victims' Reparations Fee

This matter should be handled by an administrative order issued over my signature to the administrative judges directing them to honor Attorney General Opinion No. 78-165 dated May 12, 1978, (a copy of which should be attached to the order) instructing the clerks not to collect the Victims' Reparations Fee specified in H.B. 2163, Sec. 18, until the further order of the court.

We will need copies for all members of the court.

The Clerks' manual should contain instructions accordingly.



SCHROEDER, C. J.

June 26, 1978

To: Chief Justice Schroeder

Re: Victims' Reparations Fee
HB 2163, Sec. 18
Attorney General's Opinion 78-165

Two or three weeks ago, I distributed to the Court a copy of the Attorney General's opinion declaring the fee imposed by the above Act unconstitutional. I talked briefly to you about this, and you stated the Court probably would not be receptive to any test case because of the heavy docket for June.

The Clerk's Manual Committee is of the opinion that the fee should be collected as required by the statute absent any repeal of the law or a judgment by a court of competent jurisdiction declaring it invalid. We are currently changing the manual to reflect 1978 legislative changes.

Do you agree that the clerks should follow the statute, notwithstanding the A.G.'s opinion, until the statute is repealed or declared unconstitutional by a court?

JRJ

Attached
A.G. Opinion 78-165