

Justice of the Peace, Committing Magistrate, Fees Of.

Under Section 4642, Political Code, a Justice of the Peace can charge only \$5.00 for all services rendered as a committing magistrate, which includes the transmitting of all papers to the District Court. Provided, however, that where the testimony is reduced to writing that the usual stenographer's fee for taking and transcribing such testimony may be charged.

Helena, Montana, Sept. 21, 1906.

Hon. A. J. Walrath, County Attorney, Bozeman, Montana.

Dear Sir:—Your letter of the 17th inst., requesting opinion of this office upon the following question, received.

“Is a Justice of the Peace acting as a committing magistrate in cases where a hearing takes place and the defendant is held to the District Court to answer an information charging him with a felony, entitled to transcript or other fees over and above the \$5 fee provided for in Section 4642, Political Code?”

Said section expressly provides that \$2.50 shall be the fee for all services rendered by committing magistrates where examination is waived, and that \$5 shall be the fee for all services rendered as a committing magistrate where a hearing takes place and witnesses are examined.

Sections 1670 and 1694 define the duties of a Justice of the Peace when sitting as a committing magistrate.

“All services rendered” certainly includes all such duties of a Justice of the Peace when acting as a committing magistrate, and it is perfectly clear that the intention of the law is that the fee of \$5 shall cover all services performed by the committing magistrate, including the certifying of the transcript and papers to the Clerk of the District Court, in all cases where the testimony of the witnesses is not reduced to writing. For the services of a committing magistrate in holding an examination are not complete until all papers and the record of proceedings had at such examination have been turned over to the Clerk of the District Court.

Under a strict construction of the law it might be held that the term “for all services rendered as the committing magistrate” would include the taking of testimony where the same is reduced to writing, but in view of the fact that Section 1680, Political Code, provides that the reducing of the testimony to writing may be done “by the magistrate or under his direction,” such a construction would not be reasonable and in many cases work a hardship. The practice in this State where

the testimony is reduced to writing by the magistrate, or under his direction, is to allow the usual stenographers' fees for taking and transcribing such testimony, in addition to the \$5 allowed the magistrate for services other than the reducing of the testimony to writing, but unless the testimony is reduced to writing, the only fee the committing magistrate can charge is the \$5 provided for the statute where there is an examination, or \$2.50 where the examination is waived.

Yours very truly,

ALBERT J. GALEN,

Attorney General.