

Fees, Appeals from Justice Court in Criminal Cases.

Under Section 4636, of the Political Code, providing that the clerk of the district court shall collect a fee of \$5.00 for the filing of papers and transcript on appeal from a justice or other inferior court, relates only to civil actions, and no fee should be charged

a defendant in a criminal case for filing the papers and transcript on appeal.

March 24, 1905.

Hon. C. R. Stranahan, County Attorney, Boulder, Montana:

Dear Sir:—Your letter of the 22nd instant, requesting an opinion of this office as to whether a defendant convicted of a misdemeanor in a justice court must, upon appealing to the district court, pay a filing fee to the clerk of the district court of \$5.00, under Section 4636 of the Political Code, to hand.

You are advised that no such fee is required of the defendant in such cases. While it is true that language used in Section 4636 makes no exceptions for criminal cases where a transcript on appeal is filed, by reading the other parts of the same section you will notice that the language is equally broad. For instance, where it says that the defendant on his appearance must pay the sum of \$2.50, and that where the judgment is in favor of the defendant he must pay the sum of \$5.00. So it seems that if you hold that the defendant on appeal from a justice court must pay a fee of \$5.00 for filing the transcript that by the same construction you would have to hold that he must pay \$2.50 when he makes his appearance in the district court or \$5.00 when judgment is entered in his favor. A defendant does not have to pay any fee when he is brought into the justice court for trial or preliminary examination, nor when he is brought into the district court to answer an indictment or information, nor, under Section 872 of the Political Code, when the defendant appeals from the district court to the supreme court is he required to pay any fee. Thus, it seems that nowhere in the statutes is a defendant who is brought into court by virtue of a warrant required to pay any fees to make his appearance, and while there is no specific section providing that he shall not pay fees to the clerk of the court upon filing transcript on appeal from a justice court, such a construction of Section 4636 would seem to be in conflict with the general spirit of our statutes in relation to defendants in criminal cases.

We, therefore, must hold that no fee should be collected in such cases.

Respectfully yours,

ALBERT J. GALEN,

Attorney General.