

## Chapter 21

### Fees Generally

#### Chapter 21

ATTY. GEN. OPINIONS: Application to filing and service under Reciprocal Enforcement of Support Act, 1956-58, p 197.

#### 21.010

##### NOTES OF DECISIONS

Statutory provisions as to cost bills apply to disbursements only, and do not affect the right to recover the filing fee on appeal, permitted by this section. *Anderson v. Adams*, (1904) 44 Or 529, 76 P 16; *Sommer v. Compton*, (1909) 53 Or 341, 100 P 289.

Relief from the payment of the fees required by law cannot be granted by the Supreme Court unless such power is specially conferred. *Therkelsen v. Therkelsen*, (1898) 35 Or 75, 54 P 885, 57 P 373.

Although requirements of payment of fees for appeal bond, transcript and notice of appeal are an unconstitutional requirement barring the appeal of an impoverished applicant on a state writ of habeas corpus, an applicant cannot apply for habeas corpus in the federal courts until he has exhausted all of his state remedies, including an original proceeding of habeas corpus in forma pauperis in the state Supreme Court. *Daugharty v. Gladden*, (1957) 150 F Supp 887.

Validity of appeal documents is not governed by payment of the filing fee in advance. *United States Nat. Bank v. Underwriters at Lloyd's London*, (1963) 239 Or 298, 382 P2d 851, 396 P2d 765. *Overruling Citron v. Hazeltine*, (1961) 227 Or 330, 361 P2d 1011.

FURTHER CITATIONS: *Hilts v. Hilts*, (1903) 43 Or 162, 72 P 697.

ATTY. GEN. OPINIONS: Authority to exact fee for performance of duties of clerk, (1971) Vol 35, p 454.

#### 21.040

##### NOTES OF DECISIONS

The Supreme Court cannot relieve a party from the payment of fees required by law to be paid to the state, unless such power is specially conferred. *Therkelsen v. Therkelsen*, (1899) 35 Or 75, 78, 54 P 885, 57 P 373.

The rule that a paper is filed when it has been delivered to the proper officer and received, to be kept in the official records, does not apply where the payment of a stated fee is made a prerequisite — in the latter case the paper is not filed until the fee has been paid. *Hilts v. Hilts*, (1903) 43 Or 162, 72 P 697.

The filing fee, advanced on the respondent's appearance in the Supreme Court, will be allowed as costs. *Anderson v. Adams*, (1904) 44 Or 529, 76 P 16.

#### 21.050

CASE CITATIONS: *Citron v. Hazeltine*, (1961) 227 Or 330, 361 P2d 1011.

#### 21.110

##### NOTES OF DECISIONS

The clerk cannot waive the payment of the fee required as a condition precedent to filing a transcript on appeal. *Hart v. Prather*, (1912) 61 Or 7, 119 P 489.

The transcript on appeal is not filed until the filing fee is paid notwithstanding the declaration in LOL 547 [ORS 16.860] that delivery constitutes filing. Id.

FURTHER CITATIONS: *United States National Bank v. Lloyd's*, (1964) 239 Or 298, 382 P2d 851, 396 P2d 765; *Robertson v. Green*, (1969) 254 Or 292, 459 P2d 871.

ATTY. GEN. OPINIONS: Collecting filing fee for transcript of appeal, 1926-28, p 161; effect of repealing clause in 1929 c. 435 upon other statutes, 1928-30, p 268; filing fee on appeal from final order of the Industrial Accident Commission, 1934-36, p 77; fee on appeal from an order of the Board of Medical Examiners, 1936-38, p 130; fees in forcible entry and detainer action begun in justice court, 1940-42, p 340; fees upon filing petition for writ of habeas corpus, 1942-44, p 322; definition of appearance, 1942-44, p 388; fees upon change of venue, 1944-46, p 5; fee on criminal appeal from justice or district court, 1956-58, p 85; fees required of defendant upon appeal of criminal conviction from district court, 1960-62, p 241; fees on change of venue, 1962-64, p 260; duty of state agencies to pay fees, 1966-68, p 257; authority to exact fee for performance of duties of clerk, (1971) Vol 35, p 454.

#### 21.112

CASE CITATIONS: *Robertson v. Green*, (1969) 254 Or 292, 459 P2d 871.

#### 21.120

CASE CITATIONS: *Robertson v. Green*, (1969) 254 Or 292, 459 P2d 871.

ATTY. GEN. OPINIONS: Amount of additional fee from defendants appearing jointly or separately, 1928-30, p 449; additional fees as applied to counties when foreclosing tax lien, 1934-36, p 284; payment of additional fees in probate proceedings, 1948-50, p 238; fee in responding reciprocal support proceeding, 1952-54, p 142; fees required of defendant upon appeal of criminal conviction from district court, 1960-62, p 241; use to pay travel expenses for attendance at traffic court conference, 1966-68, p 275; responsibility for costs incurred in proceedings against a judge, 1966-68, p 456.

## 21.130

CASE CITATIONS: *Robertson v. Green*, (1969) 254 Or 292, 459 P2d 871.

## 21.270

## NOTES OF DECISIONS

A court rule requiring payment of this fee two days before the case is called violated the provisions of this section and must yield thereto. *Schnitzer v. Stein*, (1920) 96 Or 343, 189 P 984.

ATTY. GEN. OPINIONS: Circumstances under which the trial fee is payable, 1932-34, pp 500, 581; duty of state agencies to pay trial fee, 1966-68, p 257.

## 21.310

ATTY. GEN. OPINIONS: Fee charged where deed was given in contemplation of death, 1938-40, p 630; filing fee based upon total gross value of estate, 1940-42, p 215; filing fee when petition for probate of will is filed during course of administration, 1942-44, p 164; filing fee for guardianships of veterans' National Service Life Insurance policies, 1944-46, p 425; duty of state agencies to pay trial fee, 1966-68, p 257; authority to exact fee for performance of duties of clerk, (1971) Vol 35, p 454.

## 21.350

## NOTES OF DECISIONS

The levy of fees on parties for support of law library was constitutional. *Marquardt v. Fisher*, (1931) 135 Or 256, 295 P 499.

FURTHER CITATIONS: *Robertson v. Green*, (1969) 254 Or 292, 459 P2d 871.

ATTY. GEN. OPINIONS: Computation and collection of filing fees for purpose of maintaining and operating county law library, 1928-30, p 339; 1938-40, p 299, 1940-42, p 398; fees required of defendant upon appeal of conviction from district court, 1960-1962, p 241.

## 21.375

## NOTES OF DECISIONS

The party prevailing on an appeal to the Supreme Court is entitled to recover the costs of the transcript of the testimony and the proceedings as well as the costs of certified copies of the judgment. *Livesley v. Strauss*, (1922) 104 Or 356, 206 P 850, 207 P 1095.

Although requirements of payment of fees for appeal bond, transcript and notice of appeal are an unconstitutional requirement barring the appeal of an impoverished applicant on a state writ of habeas corpus, an applicant cannot apply for habeas corpus in the federal courts until he has exhausted all of his state remedies, including an original proceeding of habeas corpus in forma pauperis in the state Supreme Court. *Daugharty v. Gladden*, (1957) 150 F Supp 887.

ATTY. GEN. OPINIONS: Disposition of naturalization fees, 1952-54, p 214; charge when copies are supplied by parties and others for certification, 1954-56, p 140; authority to exact fee for performance of duties of clerk, (1971) Vol 35, p 454.

## 21.410

CASE CITATIONS: *Coleman v. Ross*, (1887) 14 Or 349, 12 P 648.

ATTY. GEN. OPINIONS: Fees in enforcement of support cases, 1956-58, p 197; mileage for serving small claims, 1960-62, p 408; fees for serving foreign process, 1962-64, p 99; sheriff's fee for "not found" return, 1964-66, p 221.

## 21.460

ATTY. GEN. OPINIONS: Duty of state agencies to pay trial fee, 1966-68, p 257.

## 21.470

## NOTES OF DECISIONS

The cost of a transcript is chargeable in the Supreme Court at the rate provided by this section. *Livesley v. Strauss*, (1922) 104 Or 356, 206 P 850, 207 P 1095; *Bell v. Hanover Fire Ins. Co.*, (1923) 107 Or 513, 214 P 340, 215 P 171; *Fischer v. Bayer*, (1923) 108 Or 311, 210 P 452, 211 P 162, 216 P 1028.

Where it is not apparent that the defendant cannot prepare a bill of exceptions without a full transcript of testimony, the refusal of the trial judge to permit defendant to have a transcript at county expense will not be disturbed. *State v. Sallee*, (1935) 151 Or 483, 48 P2d 770; *State v. Morgan*, (1935) 152 Or 1, 48 P2d 766, 52 P2d 186.

The right to a transcript at public expense should be tested, as a general rule, by the showing made before the trial court when defendant's application for such transcript was made. *Id.*

FURTHER CITATIONS: *Allen v. Standard Box & Lbr. Co.*, (1908) 53 Or 10, 96 P 1109, 97 P 555, 98 P 509; *Sommer v. Compton*, (1909) 53 Or 341, 100 P 289; *McGee v. Beckley*, (1909) 54 Or 250, 102 P 303, 103 P 61; *Shepherd v. Inman-Poulsen Lbr. Co.*, (1917) 85 Or 639, 167 P 785; *Burdick v. Tum-A-Lum Lbr. Co.*, (1920) 97 Or 459, 191 P 654; *State v. Delaney*, (1960) 221 Or 620, 332 P2d 71, 351 P2d 85; *Bevel v. Gladden*, (1962) 232 Or 578, 376 P2d 117.

LAW REVIEW CITATIONS: 39 OLR 366.

## 21.560

ATTY. GEN. OPINIONS: Fees in proceedings relating to liquidation of insolvent bank or trust company, 1930-32, p 760; liability of state boards and commissions, whose income is derived other than from direct tax on tangible property, to pay court fees, 1938-40, p 421; liability of state departments, 1948-50, p 118; payment of fees by an irrigation district, 1948-50, p 242; duty of state agencies to pay fees, 1966-68, p 257.

## 21.570

ATTY. GEN. OPINIONS: Payment of fees in an action to foreclose a mortgage by the State Land Board, 1922-24, p 362; duty of state agencies to pay trial fee, 1966-68, p 257.

## 21.580

ATTY. GEN. OPINIONS: Duty of state agencies to pay trial fee, 1966-68, p 257.

## 21.590

## NOTES OF DECISIONS

District attorney fees required of divorce applicants under

OCLA(s) 93-913d [ORS 21.130] may be taxed as a disbursement in favor of a successful applicant. *Wright v. Beveridge*, (1927) 120 Or 244, 251 P 895.

**21.600**

**NOTES OF DECISIONS**

This section was not unconstitutional as an administration of justice by purchase under Ore. Const. Art. I, §10; nor unconstitutional as a violation of the right of a trial by jury under Ore. Const. Art. I, §17. *Bailey v. Frush*, (1873) 5 Or 136.

In the appellate court the appellant is the party in all cases to advance the trial fee. *Id.*

If it appears by affidavit of the party that he is unable to advance the trial fee, it will not be required. *Id.*

ATTY. GEN. OPINIONS: Applicability to filing fees, 1930-32, p 504.

**21.605**

CASE CITATIONS: *Robertson v. Green*, (1969) 254 Or 292, 459 P2d 871.

**21.660**

CASE CITATIONS: *Rader v. Barr*, (1900) 37 Or 453, 61 P 1027, 1127.

ATTY. GEN. OPINIONS: Payment of fees by the state for preparation of transcript on appeal, 1930-32, p 487; payment

of witness fees to persons appearing for parties to a hearing before the Civil Service Commission [now Public Employee Relations Board] and to persons appearing for the commission, 1948-50, p 70.

**21.720**

**NOTES OF DECISIONS**

This section does not authorize the county court to grant a sheriff traveling expenses incurred while serving subpoenas in criminal cases within the county. *Houser v. Umatilla County*, (1897) 30 Or 486, 49 P 867.

FURTHER CITATIONS: *State v. Delaney*, (1960) 221 Or 620, 332 P2d 71, 351 P2d 85.

ATTY. GEN. OPINIONS: County's liability for fee of physician making examination for intoxication, 1936-38, p 158; county public defender office, (1970) Vol 34, p 1157.

**21.730**

**NOTES OF DECISIONS**

An agent appointed under former extradition law was entitled to invoke this section in respect of his per diem. *State v. Chadwick*, (1879) 10 Or 525.

This section seems to refer to services within the state. *Id.*

ATTY. GEN. OPINIONS: Mileage for serving small claims, 1960-62, p 408.