

CRIMINAL COST: MEDICAL ATTENTION: Sections 8534, 8554, 3825 and 3840, R. S. Mo. 1929.

February 28, 1933

OPINION NO. 3



Hon. Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

Your request for an opinion from this department on the subject of Criminal Cost -- Medical Attention, has been referred to the undersigned for attention. In connection with your request you submit the following:

"Where a defendant is convicted and sent to the penitentiary, is the State liable for medical attention furnished such prisoner while in the county jail?

For the reasons set out further in this letter, this office has thus far taken the position that such an expense is a "defendant's cost", and under Section 3825, R. S. Mo. 1929, not taxable against the State.

The only law, which we find applicable to this situation, is that contained in the following statutes:

Section 8533, R. S. Mo. 1929: Whenever any person, committed to jail upon any criminal process, under any law of this state, shall declare, on oath, that he is unable to buy or procure necessary food, the sheriff or jailer shall provide such prisoner with food, for which he shall be allowed a reasonable compensation, to be fixed by law; and if, from the inclemency of the season, the sickness of the prisoner or other cause, the sheriff shall be of the opinion that fuel, additional clothes or bedding, medicine and medical attention

are necessary for such prisoner, he shall furnish the same, for which he shall be allowed a reasonable compensation.

Sec. 8534. The expenses of imprisonment of any criminal prisoner, such as accrue before conviction, shall be paid in the same manner as other costs of prosecution are directed to be paid; and those which accrue after conviction shall be paid as is directed by the law regulating criminal proceedings.

Sec. 8554. In case any prisoner confined in the jail be sick, and, in the judgment of the jailer, needs a physician or medicine, said jailer shall procure the necessary medicine or medical attention, the costs of which shall be taxed and paid as other costs in criminal cases; or the county court may, in their discretion, employ a physician by the year, to attend said prisoners, and make such reasonable charge for his service and medicine, when required, to be taxed and collected as aforesaid.

Article 19 of Chapter 29, R. S. Mo. 1929, is the general law pertaining to criminal cost, Sec. 3825 being the one applicable here, we believe. It provides:

Sec. 3825. Whenever any person shall be convicted of any crime or misdemeanor he shall be adjudged to pay the costs, and no costs incurred on his part, except fees for board, shall be paid by the state, or county.

The real question here, it seems, is whether this medical expense is a "defendant's cost". If it is, then under Sec. 3825 above, the State is clearly not liable for its payment. By this section, the Legislature has expressly recognized that a "board bill" is a cost incurred on defendant's part. We have taken the view that medical costs is as much a defendant's cost as is his board bill of the per diem or mileage of his witnesses.

In controversies arising out of our past position on this question, our attention has been frequently called to the injustice resulting from the non-payment of the physician, but as to this, we can see no alternative for any executive officer, but to follow the wording of the Statutes, and their interpretation by the courts.

Liability for the payment of costs in criminal cases is strictly a statutory liability, and the question of justice or injustice to the parties claiming cost is not a matter for consideration here.

State ex rel v. Oliver, 116 Mo. 188;
Bright v. Pike County, 69 Mo. 519;
Person v. Ozark County, 82 Mo. 491.

No one is entitled to fees of any kind unless he can point to a statute expressly allowing the same. The law conferring such right must be strictly construed because of statutory origin.

State vs. Wofford, 116 Mo. 220;
State vs. Union Trust Co., 70 Mo. App. 311.

The right of costs is entirely conferred by statute. It is contrary to the policy of the law to enlarge such statutes by loose construction so as to build up constructive fees, since, as experience shows, the practice of taking these fees has a tendency to grow insensibly, even where the courts construe the statutes granting them strictly.

Bank v. Glaser, 40 A. 371."

The sections of the statute to which you refer, appear to be the only statutory provision touching upon the subject of your inquiry. After a reading of these sections, together with the cases mentioned in your brief, it is the opinion of this

department that the State is not liable for medical attention furnished a prisoner while incarcerated in the county jail where defendant is thereafter convicted and sent to the penitentiary. While the statute provides that the cost of medicine and medical attention shall be taxed as cost and paid as other criminal cost, it does not provide that it shall be taxed as state cost and paid as other state costs. Such construction, in our opinion could not be placed upon this provision by implication. Unless the prisoner is financially able to make payment for this service, it would appear that the county court should make provision to take care of such contingency under the authority granted to it by Section 8554, supra, or by Section 3840, R. S. Mo. 1929, which provides,

"The county court of any county in which a prisoner may be confined, whenever satisfied of the necessity of so doing, may make an allowance for ironing such prisoner, and may allow a moderate compensation for medical services, and extra bedding or menial attendance furnished any sick prisoner, which shall be paid out of the treasury of the county in which the cause originated."

Very truly yours,

CARL C. ABINGTON
Assistant Attorney-General

APPROVED: _____
ROY McKITTRICK
Attorney-General

CCA:EG