

MAGISTRATES:
CHANGE OF VENUE:
CRIMINAL COSTS:

When a change of venue is granted from magistrate in misdemeanor case the defendant is not required to pay any costs until after trial and conviction.



February 27, 1950

Honorable G. Logan Marr
Prosecuting Attorney
Morgan County
Versailles, Missouri

Dear Sir:

This is in answer to your letter of recent date requesting an official opinion of this department, reading as follows:

"Every time, we have a misdemeanor case for trial in the local magistrate court, and the judge is sworn off the bench by an affidavit of bias and prejudice, the Court, immediately taxes the costs to date against the defendant, and requires the defendant to pay the costs accrued before the change of venue is granted, and threatens to issue a commitment against defendants and jail them for non-payment of costs; and in one case did issue an execution and garnishee the bank account of a defendant, who swore the magistrate off the bench.

"Now I want an opinion outlining the procedure in the magistrate court on such a matter, and of course that calls for an interpretation of the statutes.

"In Laws of 1945 at page 755, sec. 16, in criminal procedure in magistrate courts, a change of venue is governed by the same laws as for change of venue in civil matters in magistrate courts.

"In the Laws of 1945 at page 791, sec. 80, in civil procedure, the lia-

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bility of parties who take a change of venue is outlined, and the costs are to be taxed at the time of the change of venue and included in the transcript of the case sent on the change of venue."

Section 16, Laws of Missouri, 1945, page 750, provides as follows:

"The defendant shall be entitled to a change of venue under the same conditions as provided for a change of venue from magistrate courts in civil cases and the procedure for change of venue provided in such cases shall be followed."

The procedure for change of venue provided in civil cases is found in Sections 76, 77, 78, 78a and 79, Laws of Missouri, 1945, page 765.

Section 80, Laws of Missouri, 1945, page 765, providing as follows:

"When a change of venue is taken by the defendant, or by the plaintiff after the defendant has had a change of venue, such plaintiff or defendant shall be taxed with the costs which have accrued for witnesses and service thereof, and witness fees, in preparing for trial at the time and place fixed therefor, and the costs of the magistrate for transferring the cause to the other magistrate or circuit court and when taken by the plaintiff from the magistrate before whom he commenced his suit, he shall be taxed with all the costs which have accrued and shall accrue in the cause until the transcript and papers shall be delivered to the magistrate or circuit clerk, as the case may be, to whom the cause is sent for trial."

is not part of the procedure for change of venue, but relates only to the taxing of costs in civil cases when a change of venue is granted.

The provisions for assessing costs against a defendant in criminal cases are found in Section 25, Laws of Missouri, 1945, page 750, which provides as follows:

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"Whenever the defendant shall be tried and found guilty, either by the magistrate or a jury, or shall enter a plea of guilty, and a fine shall be assessed, the magistrate shall enter judgment against the defendant for such fine, and if the punishment shall be imprisonment in the county jail, or shall be both a fine and imprisonment, the magistrate shall enter judgment according to the finding of the court or verdict of the jury, and immediately commit the defendant to the county jail for the time designated in the judgment, and the defendant shall be adjudged to pay the costs, and may be committed to the county jail until the judgment for both fine and costs shall be paid, or until he shall be discharged therefrom under the provisions of the next succeeding section."

Since such provision provides that the costs are to be assessed against a defendant and collected in criminal cases only if such defendant is tried and convicted, it is our view that the collection of criminal costs, including costs which have accrued prior to change of venue, are collectible from the defendant only after a defendant has been tried and convicted.

CONCLUSION

It is the opinion of this department that criminal costs, including costs accrued prior to a change of venue granted a defendant in a misdemeanor case in magistrate court, can be taxed against and collected from a defendant only after he has been tried and convicted.

Respectfully submitted,

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APPROVED:

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