

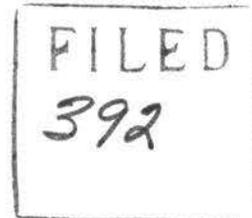
CRIMINAL COSTS:

The state shall pay from the criminal cost appropriations for the cost of "a transcript" of criminal proceedings where the defendant is sentenced to five years or more in the penitentiary when the transcript is required by the judge, but that there is no authority for the state to pay for a copy thereof when required by the judge at the conclusion of the case.

OPINION NO. 392

October 14, 1969

Honorable Brendan Ryan  
Circuit Attorney  
City of St. Louis  
Municipal Courts Building  
St. Louis, Missouri



Dear Mr. Ryan:

In your letter of August 28, 1969, you requested an opinion from this office as follows:

"For some time it has been the practice of the judges of the St. Louis Circuit Court to require the court reporter to prepare a transcript - consisting of an original and one copy - in all criminal cases in which defendants enter pleas of guilty and are given sentences of five years or more. Such original and copy are then placed in the court file as part of the permanent record. This practice originated out of the judges' experiences with the multiplicity of Sup. Crt. Rule 27.26 Motions that have been filed in recent years and discussions and suggestions pertinent thereto that were made at some of the judicial conferences.

"In most of the Rule 27.26 proceedings the defendants are indigent, and their attorneys - appointed counsel usually - requests a transcript of the proceedings at the time of the defendant's plea. The ready availability of the copy of the transcript has saved much time and avoided many difficulties.

"The Comptroller's Office pays for the original but declines to pay for the carbon copy of the transcript.

Honorable Brendan Ryan

"An official opinion is respectfully requested as to whether or not, under the provisions of Section 485.100 RSMo Supp. 1965 the State should pay for the carbon as well as for the original transcript."

Section 485.100, RSMo Supp. 1967, to which you refer provides in part:

". . . Any judge, in his discretion, may order a transcript of all or any part of the evidence or oral proceedings, and the court reporter's fees for making the same shall be paid by the county, upon a voucher approved by the court, and taxed against the state or county as may be proper. In criminal cases where an appeal is taken by the defendant, and it appears to the satisfaction of the court that the defendant is unable to pay the costs of the transcript for the purpose of perfecting the appeal, the court shall order the same to be furnished, and the court reporter's fees for making the same shall be paid by the county, upon a voucher approved by the court, and taxed against the state or county as may be proper; and in such case the court reporter shall furnish three transcripts in duplication of the notes of the evidence, for the original of which he shall receive forty-five cents per legal page and for the copies fifteen cents per page." (Emphasis added)

The State of Missouri is now reimbursing the counties for the cost of "a transcript" ordered under Section 485.100, RSMo Supp. 1967, because the state is liable under Section 550.020(1), RSMo 1959, which provides:

". . . in all cases in which the defendant shall be sentenced to imprisonment in the penitentiary, . . . the state shall pay the cost, . . ."

Moreover, the last clause of Section 550.020(1), RSMo 1959, provides that the state shall not pay costs "incurred on behalf of defendant."

It is apparent from the facts as outlined in your letter that the carbon copy of the transcript for which payment is sought is being prepared for the benefit of the defendant. Therefore, there is no statutory authority under Section 550.020, RSMo 1959, which allows payment by the state.

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CONCLUSION

It is therefore the opinion of this office that the state shall pay from the criminal cost appropriations for the cost of "a transcript" of criminal proceedings where the defendant is sentenced to five years or more in the penitentiary when the transcript is required by the judge, but that there is no authority for the state to pay for a copy thereof when required by the judge at the conclusion of the case.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Craft.

Yours very truly,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive, flowing style.

JOHN C. DANFORTH  
Attorney General