

CRIMINAL LAW:

State is liable for costs on a plea of guilty in a felony case, even if the defendant is paroled from the bench.

January 19, 1940

Hon. Emory C. Medlin
Prosecuting Attorney
Barry County
Cassville, Missouri



Dear Sir:

We are in receipt of your request for an opinion, dated January 17, 1940, which reads as follows:

"I would appreciate an opinion for myself, the circuit clerk, and sheriff.

"If the defendant pleads guilty in circuit court, and the circuit judge accepts his plea and then gives him what's known as a suspended sentence will the costs be allowed and paid then or will the State refuse to pay the costs as long as the suspended sentence is pending?"

Section 3809, R. S. Missouri, 1929, was amended in the Session Laws of 1939, and designated as Section 3809, at page 356, which reads as follows:

"The circuit and criminal courts of this state, the court of criminal correction of the city of St. Louis and boards of parole created to serve any such court or courts shall have power, as hereinafter provided, to parole persons convicted of a violation of the criminal laws of this state."

January 19, 1940

I am assuming from your request, in which you refer to the payment of costs by the state, that the suspended sentence was given on a felony for which the state was liable for the costs.

Section 3811 R. S. Missouri, 1929, reads as follows:

"When any person of previous good character and who shall not have been previously convicted of a felony, shall be convicted of any felony except murder, rape (where the rape charged and the proof shows said rape to have been committed by means of force, violence or by putting the female in fear of immediate injury to her person), arson or robbery, and imprisonment in the penitentiary shall be assessed as the punishment therefor, and sentence shall have been pronounced, the court before whom the conviction was had, if satisfied that such person, if permitted to go at large, would not again violate the law, may in his discretion, by order of record, parole such person and permit him to go and remain at large until such parole be terminated as hereinafter provided: Provided, that the court shall have no power to parole any person after he has been delivered to the warden of the penitentiary."

Section 3812 R. S. Missouri, 1929, provides that the circuit judge who grants a parole may terminate the same without notice.

Section 3813 R. S. Missouri, 1929, provides that the person paroled under the provisions of Section 3811, supra, must make a bond with proper sureties, conditioned for his appearance in court on the first day of each regular term of court during a continuance of such parole.

Under section 3815, R. S. Missouri, 1929, it is the duty of the person paroled to appear each regular term and furnish proof that he has complied with all the conditions of such parole. The conditions of the parole may extend for as long a period as ten years, and it was so held in the case of Ex Parte Mounce, 269 S. W. 383, l.c. 387, where the court said:

"As we understand the petitioner's contention, it is that, when a person has been sentenced to serve a term of imprisonment in the penitentiary for two years, which happens to be the minimum within which a paroled person may be discharged, such person is rightfully entitled to be discharged at the end of such 2-year period, plus one term of court thereafter (unless such parole has sooner been terminated), regardless of whether or not reformation be deemed complete, and notwithstanding the fact that discharge, after 2 years have elapsed, is left to the discretion of the court by section 4162. Such contention is unsound, and comes squarely in conflict with the whole plan and purpose of our judicial parole act.

"The broad language of section 4163 is that:

"'No person paroled under the provisions of section 4159 (4157) of this article shall be granted an absolute discharge at an earlier period than two years from date of his parole.' (The section referred to clearly was intended to be section 4157.)

"This language, and that quoted from section 4162, clearly indicate that the parole may be continued longer than two years, and for any period up to ten years, within the discretion of the court."

Section 3817 R. S. Missouri, 1929, partially reads as follows:

"No person paroled under the provisions of section 3813 of this article shall be granted an absolute discharge at an earlier period than two years from date of his parole, nor shall such parole continue for a longer period than ten years: * "

Section 3818 R. S. Missouri, 1929, reads as follows:

"It shall be the duty of the court granting the parole to require the person paroled to pay or give security for the payment of all costs that may have accrued in the cause, unless the person paroled shall be insolvent and unable to either pay said costs or furnish security for the same. In the latter case the costs shall be paid by the state or county as in other cases without such persons being required to serve any time in jail for non-payment of fine or costs. Such payment of cost by the state or county shall not relieve such person from liability for the same, but if at any time before his final discharge he shall become able to pay said costs, it shall be the duty of the court to require said costs to be paid before granting a discharge, and said costs when so paid shall be turned into the state or county treasury, as the case may require."

Under the above section, if the state should pay the costs in any felony case, for which it is liable, and later the costs can be collected from the defendant, or defendants, and the costs are collected before granting a discharge, then the costs shall be turned into the state treasury. From the above section it is shown that it is the intention of the legislature that the state

shall pay the costs in cases in which it is liable, even before the final discharge of the defendant under the suspended sentence.

Claims against the state must be presented within two years from the time that they accrue. This law is set out in Section 11416 R. S. Missouri, 1929, which reads as follows:

"Persons having claims against the state shall exhibit the same, with the evidence in support thereof, to the auditor, to be audited, settled and allowed, within two years after such claims shall accrue, and not thereafter."

It has been held that cost and fee bills are subject to the statute of limitation, as set out in Section 11416, supra, and was upheld in the case of State ex rel Johnson v. Draper, State Auditor, 48 Mo. 56.

In a case where the state is liable for the costs they are due and payable from the state after conviction and sentence, and the parole or suspended sentence is not even an incident to the case itself. After sentence on a felony, the statute of limitation will run after two years from the date of the sentence. It was so held in the case of State v. Kelly, 274 S. W. 731, l.c. 733, where the court said:

"* * * But the granting of a parole has naught to do with the ascertainment of guilt or innocence. It presupposes the defendant's guilt. An application for parole cannot be entertained until after a judgment of conviction has been rendered (sections 4156 and 4157, R. S.

1919) and that judgment has become a finality (section 4167, R. S. 1919). The granting of a parole, therefore, whether it be deemed a conditional suspension of sentence or a conditional pardon is no part of the trial of a cause which culminates in a judgment of conviction, nor is it in any way incident thereto. * * * "

CONCLUSION

In view of the above authorities, it is the opinion of this department, that where, under the law, the state is liable for the costs in a case if a defendant should plead guilty to such a charge and was duly sentenced the State should allow and pay the costs, if not collectible from the defendant.

It is further the opinion of this department that if the defendant is given a parole, which is sometimes called a "bench parole" or "suspended sentence" and he becomes solvent and the costs can be collected from him, then the costs should be turned to the State Treasury if the same had been paid by the State.

It is further the opinion of this department that the state on a plea of guilty and sentence is not liable for the costs if not certified to the State Auditor within two years from the date of sentence.

Respectfully submitted,

APPROVED:

W. J. BURKE
Assistant Attorney General

TYRE W. BURTON
(Acting) Attorney General

WJB:RW