

SHERIFFS: When entitled to commitment fees from county.

December 3, 1940

Hon. L. A. Pickard
Presiding Judge
Dunklin County
Kennett, Missouri



Dear Sir:

We are in receipt of your request for an opinion under date of November 27, 1940, as follows:

"There has been some controversy over a period of months between this County Court and the Sheriff relative to the payment of commitment fees of \$1.00 each on persons committed to the County Jail.

"Some 18 months ago, auditors from the State Auditors Office, in checking the records of Dunklin County, advised the Court not to pay the monthly commitments which had been received by the Sheriff from County Revenue funds, claiming that these commitments were due to be filed in cost bills submitted to the Circuit Clerk for approval and payment by the State.

"The Sheriff contends that many commitments are made in misdemeanors and

investigations where cost bills do not originate and go up to the Circuit Clerk, and it is on such commitments as these that the Sheriff contends he should receive payment from the County Court from County Revenue.

"For some 15 or 18 months, since being advised by the State auditors, this Court has declined to make payment to the Sheriff, and in as much as the present sheriff's term of office expires at the end of this year he is very anxious that disposal be made of his claims; therefore, we would like to have an opinion from you in detail, setting forth the position the County Court should take in this matter."

In determining those costs which are to be paid by the county, we should consider the following statutes:

Section 3825 R. S. Mo. 1929, which reads as follows:

"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."

Section 3827 R. S. Mo. 1929, as follows:

"When the defendant is sentenced to imprisonment in the county jail, or to pay a fine, or both, and is unable to pay the costs, the county in which the indictment was found or information filed shall pay the costs, except such as were incurred on the part of the defendant."

And, Section 3828 R. S. Mo. 1929, as follows:

"In all capital cases, and those in which imprisonment in the penitentiary is the sole punishment for the offense, if the defendant is acquitted, the costs shall be paid by the state; and in all other trials on indictments or information, if the defendant is acquitted, the costs shall be paid by the county in which the indictment was found or information filed, except when the prosecutor shall be adjudged to pay them or it shall be otherwise provided by law."

The term "costs" when found in the above statutes, would, in each instance, include the fee due the sheriff for committing the defendant to jail. Summarizing, the county should pay the sheriff's commitment fee in the following instances:

- (1) When the defendant is sentenced to imprisonment in the county jail, or to pay a fine, or both, and is unable to pay the costs;
- (2) in all cases where the defendant is acquitted, if the possible punishment which could have been inflicted included imprisonment in the county jail or a fine.

The above rules apply in either justice courts or courts of record. Before the county may pay criminal costs, in cases before justices of the peace, there must be a compliance with Section 3851 R. S. Mo. 1929, which is as follows:

"Whenever the state or county shall be liable under the provisions of this article, or any other law, for costs incurred in any examination of any felony, or in the trial of any misdemeanor before any justice of the peace, it shall be the duty of such justice to make out, certify and return to the clerk of the circuit or criminal court of the county a complete fee bill, specifying each item of service and the fee therefor, together with all the papers and docket entries in the case; and it shall thereupon be the duty of such clerk to make out a proper fee bill of such costs, which shall be properly and legally chargeable against the state or county, which shall be examined by the prosecuting attorney, and proceeded with in all respects as a fee bill made out for costs incurred in such court of record."

Therefore, all fee bills for which the county could be liable must come from the office of the circuit clerk of this County, and be examined by the prosecuting attorney whether such fees were incurred in the justice courts or in the circuit court, and the court could not pay those costs mentioned in paragraph three of your letter where cost bills do not reach the office of the circuit clerk.

Hon. L. A. Pickard

-5- December 3, 1940

In no case could the county pay a commitment fee where suspects were picked up and no charges ever filed.

In connection with the above, we also wish to call your attention to Section 3510 R. S. Mo. 1929, which reads as follows:

"When the information is based on an affidavit filed with the clerk or delivered to the prosecuting attorney, as provided for in section 3505, the person who made such affidavit shall be deemed the prosecuting witness, and in all cases in which by law an indictment is required to be indorsed by a prosecutor, the person who makes the affidavit upon which the information is based, or who verifies the information, shall be deemed the prosecutor; and in case the prosecution shall fail from any cause, or the defendant shall be acquitted, such prosecuting witness or prosecutor shall be liable for the costs in the case no otherwise adjudged by the court, but the prosecuting attorney shall not be liable for costs in any case."

The prosecutor is required to endorse himself as a prosecuting witness in the following cases, as provided by Section 3542 R. S. Mo. 1929, which is as follows:

"No indictment for any trespass against the person or property of another, not amounting to a felony,

except for petit larceny, and no indictment for the disturbance of the peace of a person, or for libel or slander, shall be preferred unless the name of a prosecutor is indorsed as such thereon, thus: 'A B, prosecutor,' except where the same is preferred upon the information and testimony of one or more grand jurors, or of some public officer in the necessary discharge of his duty. If the defendant be acquitted or the prosecution fails, judgment shall be entered against such prosecutor for the costs."

The liability of the county is briefly summarized in the case of State v. Williams, 92 Mo. App. 443, 1. c. 450, as follows:

"* * * The county is not liable in case of misdemeanor, unless the defendant be acquitted and there is no prosecutor who is liable for costs or in cases when the defendant is convicted and is unable to pay the cost. * * *"

CONCLUSION.

It is, therefore, the conclusion of this department that the county is liable for the sheriff's commitment fee in misdemeanor cases where the defendant

Hon. L. A. Pickard

-7- December 3, 1940

is acquitted and there is no prosecutor who is liable for costs, in cases where the defendant is convicted and is unable to pay the costs, and in cases where the defendant is acquitted, where the possible punishment is either confinement in the penitentiary or fine and imprisonment in the county jail.

Respectfully submitted,

ROBERT L. HYDER
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

RLH:RW