

MUNICIPAL CORPORATIONS: City of the third class liable for court costs, except in certain instances.

February 3, 1943.



Mr. Charles H. Woods  
Clerk of the Circuit Court  
Butler County  
Poplar Bluff, Missouri

Dear Mr. Woods:

The Attorney-General wishes to acknowledge receipt of your letter of January 29, 1943, in which you request an opinion of this office on two different questions. One of these questions has been answered by furnishing you an opinion written at a earlier date by an Assistant in this office. This leaves only one question to be taken up in this opinion and that is on the following matter:

"Is a city of the 3rd class liable for court costs?"

The general statute in the State of Missouri relative to the liability for costs incurred in the courts of this State, is Section 1406, Revised Statutes of Missouri for 1939, which provides as follows:

"In all civil actions or proceedings of any kind the party prevailing shall recover his costs against the other party, except in those cases in which a different provision is made by law."

We have searched the statutes relative to cities of the third class and we find no statutes or provisions in such statutes which provides that a municipal corporation is exempt from the payment of costs incurred in actions in the courts of this State in which it is a party. The statutes and decisions of this State confer the right of cities and municipal corporations to bring actions in the courts and also provides

that they may be sued in certain instances. This will appear to destroy the sovereignty of such municipal corporations and they fall under the provision of Section 1406 which we have cited above. However, in cases wherein a city of the third class is endeavoring to enforce ordinances under its police regulations, a different rule applies in this State.

In the case of *City of Greenfield v. Farmer*, 190 S. W. 406, 195 Mo. App. 209, it was held that where a city was attempting to enforce one of the ordinances of the city, which was a city of the fourth class, and the decision in such case was against the city, that the costs could not be taxed against such municipal corporation. The court said in that case the following:

"In addition to the reason that we have been unable to find any statute authorizing the taxation of costs, in a proceeding like this, against a city of the fourth class, we think it would be manifestly wrong to hold the city for attempting to enforce its ordinances in its police regulation; the city is thereby acting in its governmental capacity or on its governing side, and if it were to be mulct in costs in cases where the proceedings are against individuals for the violation of its ordinances, it might, because of its limited powers to raise revenue, become a bankrupt in attempting to police the city, or, on the other hand, would be slow to enforce municipal regulations for fear of becoming liable for the costs."

It appears that the same reasoning and ruling applies to cities of the third class as do to cities of the fourth class in this particular type of action. Therefore, it appears that in civil actions the prevailing party should recover costs regardless of whether or not there is a municipal corporation involved, but that in actions for the enforcement of police regulations and criminal regulations under the

ordinances of the city, that the costs shall not be taxed against such city.

Conclusion.

Therefore, it is the opinion of this Department that cities of the third class are governed by the provisions of Section 1406, R. S. Mo. 1939, with relation to costs in lawsuits in which they are involved, except in those cases where there is an attempt by such city to enforce an ordinance under the police regulations of such city. In that case, under the ruling set out in City of Greenfield v. Farmer, supra, the costs in such case shall not be taxed against the city.

Yours very truly,

JOHN S. PHILLIPS  
Assistant Attorney-General

APPROVED:

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ROY McKITTRICK  
Attorney-General

JSP:EG