

CRIMINAL LAW:
AND COSTS:

Costs for issuing search warrants to agents
of the Conservation Commission.

FILED

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December 21, 1948

12-22

Honorable A. B. Hoy
Magistrate, Saline County
Marshall, Missouri

Dear Judge Hoy:

This will acknowledge receipt of your request for an opinion
which reads:

"I am writing you for an opinion with reference
to payment of costs of Search Warrants.

"My problem is that where Search Warrants are
issued to a Conservation Agent under Section 5,
page 666 of the Session Acts of 1945, 'providing
that an agent of the Commission may cause
proceedings to be commenced against any person
for the violation of the Conservation Act or
any such rules and regulations and such officer
shall not be obligated to furnish security for
costs.' Under this section our resident agent
of the Commission made affidavit for search
warrants to search the premises of five different
persons. Said warrants were returned with no
results and no action was brought against any
of these people.

"Will the magistrate office be charged up with
the usual \$2.50 Magistrate Fee under this
situation, and if so, how will they be and
by whom paid?"

It is well established that at common law costs were unknown
and therefore one's right to costs depends entirely upon the
statutes. Furthermore, such statutes must be strictly construed.
See In re: Thompson, 150 S.W.(2d) 626, State v. Ball, 158 S.W.(2d)
182; McCrary v. Michael, 109 S.W.(2d) 50, 233 Mo. App. 797.

We have searched the statutes to find such authority for taxing
costs in this instance and find statutes covering most all kinds of
cases involving costs such as proceedings to recover fine, penalty
or forfeiture, trial on an indictment or information, when a person

has been committed or recognized to answer for a felony or the defendant has been discharged or acquitted, or upon conviction of a misdemeanor, or the crime committed constitutes a capital offense. However, this case does not come within any of the foregoing statutes relating to costs.

It does provide under Section 5, page 666, Laws Missouri, 1945, that any authorized agent of the Conservation Commission may cause proceedings to be commenced against any person violating said act, or any rules and regulations, promulgated by said Conservation Commission and such officers are not obligated to furnish security for costs. Said provision further authorizes such agents in certain instances to search without the necessity of securing a search warrant but further requires said agents to secure a search warrant to search certain premises and that said warrant shall be issued by any magistrate having jurisdiction, upon said complaint being made under oath in writing that he has reasonable and probable cause to believe that wild life is being concealed contrary to said act or rules and regulations of the Commission. There is no provision in said act fixing liability for such costs.

In view of the foregoing announced principle relative to taxing costs, there definitely must be a specific statute authorizing the taxing of such costs before anyone may be required to pay same and in this case there is no such statute. For the purpose of this opinion we are assuming that no information had been filed prior to the issuance of the search warrant.

CONCLUSION

Therefore, in the absence of any specific statutory authorization to tax said costs we must conclude that such costs cannot be taxed in this instance.

Respectfully submitted,

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APPROVED:

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