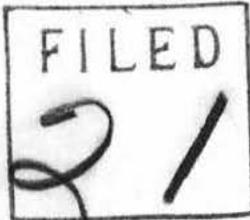


CRIMINAL COSTS: BOARD OF  
MATERIAL WITNESSES: HOW  
TAXED IN THIRD OR FOURTH  
CLASS COUNTIES:

In third or fourth class county when  
examining magistrate in felony case binds  
defendant over for trial in circuit court  
and commits material witnesses to jail  
in default of required recognizance, and  
defendant is convicted and sentenced to  
penitentiary; county, and not state liable  
to reimburse sheriff for board bill.

October 27, 1952 10-28-52 ✓



Honorable Dick B. Dale, Jr.,  
Prosecuting Attorney of  
Ray County  
Richmond, Missouri

Dear Sir:

Your request for a legal opinion of this department has been  
received, and reads in part as follows:

"Whether the State or the County shall pay  
the board bill of material witnesses in a  
felony case in which the Defendant entered  
a plea of guilty and was sentenced to the  
State Penitentiary at Jefferson City,  
Missouri?"

The facts upon which this inquiry is based are these:

A first degree murder charge was filed before a magistrate of  
Ray County, Missouri, against one R, who was bound over on said charge  
for trial at the next term of circuit court, M, C and W, were material  
witnesses for the state and were required by the examining magistrate  
to enter into a five hundred dollar recognizance for their attendance  
as witnesses at the trial of the case in circuit court. Upon their  
failure or refusal to give the recognizance in the required amount,  
each of said witnesses was committed to the county jail by the magis-  
trate where he remained for a period of fifty-two days and until the  
case was disposed of in circuit court.

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The case was disposed of when the charge in the information was reduced from first degree murder to manslaughter, to which the defendant entered a plea of guilty and the court sentenced defendant to a term of five years in the State Penitentiary.

It is for the board bill of the above mentioned witnesses while confined in the Ray County jail that the present inquiry as to whether the state or county should reimburse the sheriff has arisen.

Under the provisions of Section 544.420, RSMo 1949, if the examining magistrate in a preliminary hearing is convinced that a felony has been committed, and there is probable cause to believe the prisoner before him is guilty it shall be the duty of said magistrate to bind said prisoner over for trial in the circuit or other court of the county having cognizance of the offense and also to bind the prosecutor and all material witnesses against such prisoner by recognizance to appear and testify at the trial of the case.

Section 544.440, RSMo 1949, in effect provides that when any witness required to enter into recognizance fails or refuses to do so he may be committed to prison until he shall comply with the court's order, or be otherwise discharged according to law.

Ray County is a county of the third class and is governed by the provisions of Section 221.090, RSMo 1949, relating to the method for payment of the expense of boarding prisoners in third and fourth class counties. Said section reads as follows:

"1. In each county of the third or fourth class, the sheriff shall furnish wholesome food to each prisoner confined in the county jail. At the end of each month, he shall submit to the county court a statement supported by his affidavit, of the actual cost incurred by him in the boarding of prisoners, together with the names of the prisoners, and the number of days each spent in jail. The county court shall audit the statement and draw a warrant on the county treasury payable to the sheriff for the actual and necessary cost.

"2. When the final determination of any criminal prosecution in a county of the third or fourth class shall be such as to render the state liable for costs under existing laws, it shall be the duty of the county clerk to certify to the clerk of the circuit court or court of common pleas in which the case was determined, the amount due the county for boarding any

prisoner who was a party in such case. It shall then be the duty of the clerk of the court in which the case was determined to include in the bill of costs against the state, all fees which are properly chargeable to the state for the board of such prisoners."

It is noted that under paragraph 1 of this section it is the duty of the sheriff of a third or fourth class county to furnish board for each prisoner confined in the county jail, and that at the end of the month he is to be reimbursed for the actual and necessary cost of the board by the county in the manner provided by the section. This section is broad enough in meaning to allow reimbursement to the sheriff for the board of each prisoner legally committed to said jail, without regard to the particular reason for the confinement.

Paragraph 2 of this section in effect provides that upon the final determination of a criminal prosecution in which the state becomes liable for the costs it becomes the duty of the county clerk to certify to the clerk of the circuit court or other court in which the case was tried the amount due the county for the board of "any prisoner who was a party in such case" and further provides that the clerk of the trial court shall include the amount of such board in the cost bill against the state when such cost bill is properly chargeable against the state.

As to when the costs of a criminal case are liable to be paid by the state one must look to Section 550.020, RSMo 1949, which reads as follows:

"1. In all capital cases in which the defendant shall be convicted, and in all cases in which the defendant shall be sentenced to imprisonment in the penitentiary, and in cases where such person is convicted of an offense punishable solely by imprisonment in the penitentiary and is sentenced to imprisonment in the county jail, workhouse or reform school because such person is under the age of eighteen years, the state shall pay the costs, if the defendant shall be unable to pay them, except, costs, incurred on behalf of defendant.

"2. And in all cases of felony, when the jury are not permitted to separate, it shall be the duty of the sheriff in charge of the jury, unless otherwise ordered by the court, to supply them with board and lodging during the time they are required by the court to be kept together, for

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which a reasonable compensation may be allowed, not to exceed three dollars and fifty cents per day for each member of the jury and the officer in charge; and the same shall be taxed as other costs in the case, and the state shall pay such costs, unless in the event of conviction, the same can be made out of the defendant."

This section provides that when the defendant is convicted he shall pay the costs of the case except in those instances when he is unable to do so and the punishment was fixed at a term in the penitentiary; then the costs shall be paid by the state except costs incurred on behalf of the defendant.

When this section is read in connection with paragraph 2, of Section 221.090, supra, it is apparent that the words "any prisoner who was a party in such case," can refer only to a defendant convicted of a criminal offense, whose punishment was fixed at not less than a term in the state penitentiary.

The three persons referred to above were committed to the county jail upon their failure to give recognizance for their attendance as witnesses in the case against R, pending in the circuit court, and they were witnesses and not co-defendants with R in said case. It is therefore our thought that even though the State of Missouri may be liable for the payment of the costs in R's case, Ray County, and not the State of Missouri will be liable for reimbursement to the sheriff of said county for the amount expended by him for the board of the prisoner-witnesses, since said witnesses were not "any prisoners who were parties in such case," within the meaning of paragraph 2, Section 221.090, supra.

#### CONCLUSION

It is the opinion of this department that in a third or fourth class county when the examining magistrate in a felony case binds the defendant over for trial in circuit court and commits material witnesses to the county jail upon their failure to furnish recognizance in the required sum for their attendance as witnesses at the trial, and said case is subsequently disposed of upon the conviction and sentencing

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of defendant to a term in the state penitentiary; that the county in which said case originated is liable for reimbursement of the board bill to the sheriff of said county.

Respectfully submitted,

PAUL N. CHITWOOD  
Assistant Attorney General

APPROVED:



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J. E. TAYLOR  
ATTORNEY GENERAL

PNC:hr