

PROSECUTING ATTORNEYS: The costs of preparing a transcript to be
COSTS: used in a prohibition proceeding growing
out of a criminal prosecution, provided
such transcript is necessary, would be a
proper county charge and could be paid out
of county funds if proper budgetary require-
ments have been met.



October 17, 1955

Honorable Frank D. Connett, Jr.
Prosecuting Attorney
Buchanan County
St. Joseph, Missouri

Dear Sir:

Reference is made to your request for an official opinion of
this office, which request reads as follows:

"This office would like your opinion on the
following problem.

"In May of 1954, we started trial in the case
of State of Missouri vs. Edna Doppler Wisneski.
After the trial had started it was stopped by
a preliminary writ of prohibition from the
Supreme Court. We filed a copy of the tran-
script of the proceedings up to that date with
the Supreme Court. The official court reporter,
Mrs. Helen Milligan, typed up the transcript
and the cost of the transcript, \$30.60, was
taxed as costs; however, this was turned down
by the state when the cost bill went through
early in 1955.

"Mrs. Milligan, the official reporter, has now
presented the county with a bill for \$30.60 for
the cost of this transcript. My question is
this: would it be lawful for Buchanan County
to pay this bill and how would they go about
doing it?"

We understand the facts to be as follows: An application for
writ of prohibition was filed in the Supreme Court seeking to pro-
hibit the circuit court from taking certain action in the case of
State of Missouri v. Edna Doppler Wisneski. The State filed a
copy of the transcript of the proceedings up to that time with the
Supreme Court. The records in the office of the Clerk of the Supreme

Honorable Frank D. Connett, Jr.

Court show that the application for the writ was denied, and the records in the office of the State Comptroller show that the costs incurred in preparing the transcript were as follows: original transcript \$22.95; one copy \$7.65. We further understand that subsequently the defendant was acquitted of the offense charged; that said costs were taxed as costs in the criminal proceeding and disallowed by the State Comptroller. You now inquire whether such costs could be paid by the county.

We believe that it is clear from the facts stated that said transcript was prepared in connection with the prohibition proceeding and, in view of the fact that such proceeding is separate and distinct from the criminal proceeding, we are of the opinion that such item should not be taxed as costs in the criminal proceeding and that the action of the State Comptroller in disallowing the same was proper.

As is stated in the case of State v. Smith, 206 SW2d 558, 1.c. 564, it is a matter of common knowledge that the respondent judge in a prohibition proceeding is represented by counsel for the litigant below who benefited by his rulings and seeks to sustain them. In the instant case, such party would be the State, acting by and through the prosecuting attorney. In view of such fact and assuming (due to lack of information upon which to make a finding) the necessity of preparing a transcript for this particular prohibition proceeding, we are of the opinion that the costs incurred would be proper county charges, necessarily expended by the office of the prosecuting attorney in the discharge of his duties, and could be paid from county funds provided that proper budgetary requirements have been met.

CONCLUSION.

Therefore, it is the opinion of this office that the costs of preparing a transcript to be used in a prohibition proceeding growing out of a criminal prosecution, provided such transcript is necessary, would be a proper county charge and could be paid out of county funds if proper budgetary requirements have been met.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Donal D. Guffey.

Yours very truly,

John M. Dalton
Attorney General

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