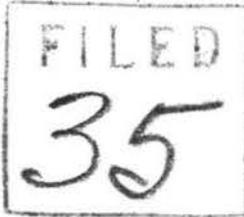


CRIMINAL COSTS:
CRIMINAL LAW:
COSTS:
MOTOR VEHICLES:

The county is liable for the costs of a prosecution for failure to report a motor vehicle accident commenced under Sec. 303.370 RSMo Cum. Supp. 1955, if the defendant is found guilty and is unable to pay the costs.



February 28, 1957

Honorable Thomas D. Graham
Representative, Cole County
Capitol Building
Jefferson City, Missouri

Dear Mr. Graham:

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

"Sheriff Ben Markway of Cole County has posed a problem to me on which I hope you will give me an opinion.

"The venue for all of the safety responsibility claims lies in Cole County and the question is this. If a defendant is found guilty and is unable to pay the costs, either for the court or the sheriff, how can the Sheriff of Cole County collect his mileage expense and the costs?

"I should appreciate an opinion on this at the first opportunity, and thank you very much for your kindness."

You inquire as to how the Sheriff of Cole County can collect his mileage expenses and costs, in the event a defendant is found guilty of failing to file a report under the provisions of Section 303.370 RSMo Cum. Supp. 1955, and is unable to pay the costs.

Section 303.370 RSMo Cum. Supp. 1955, makes the failure to report an accident punishable by a fine not in excess of five hundred dollars. As previously pointed out in an opinion of this office to James T. Riley, Prosecuting Attorney of Cole County, under date of January 21, 1957, a copy of which is enclosed herewith, it is difficult to determine whether said section constitutes a "fine", within the meaning of Section 550.050 RSMo 1949, or a misdemeanor. Likewise, in this opinion we do not feel that a

Honorable Thomas D. Graham

determination of the question is necessary, for the reason that in either event the ultimate conclusion would be the same. Section 550.050, provides in part as follows:

"* * * if he is convicted, and unable to pay the costs, the county shall pay all the costs, except such as were incurred on the part of the defendant."

Section 550.030, relating to misdemeanors, provides 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."

Both of the above-noted statutory provisions provide that the county shall be liable for the costs (except costs incurred on the part of the defendant), where a defendant is found guilty and is unable to pay the costs.

CONCLUSION

Therefore, it is the opinion of this office that the county is liable for the costs of a prosecution for failure to report a motor vehicle accident commenced under Section 303.370 RSMo Cum. Supp. 1955, if the defendant is found guilty and is unable to pay the costs.

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

Very truly yours,

John M. Dalton
Attorney General

DDG/d
enc. (1)