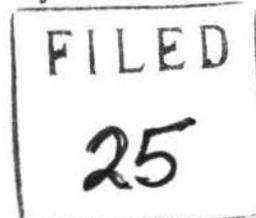


May 14, 1980

OPINION LETTER NO. 25
(Answer by Letter-Klaaffenbach)

The Honorable Stephen Bradford
Commissioner of Administration
Office of Administration
Post Office Box 809
Jefferson City, Missouri 65102



Dear Mr. Bradford:

This letter is in response to your question asking:

Is the State of Missouri liable for the clerk's fees set forth in Section 483.530 in subsections 3 and 4 of House Bill No. 1634 as a part of costs in criminal cases for which the State might be liable pursuant to Section 550.020 and 550.040, RSMo. 1978 and to be paid from appropriations to the Office of Administration for payment of costs in criminal cases? If the State of Missouri is not liable for the clerk's fees set forth in Section 483.530, who is?

Section 483.530, RSMo, provides in pertinent part:

The clerk who is responsible for collecting fees under the provisions of section 483.550 shall charge and collect the following fees:

. . . .

(3) In felony cases, the sum of \$10 in each preliminary hearing;

(4) In felony cases, the sum of \$15 for each information or indictment filed;

. . . .

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Section 550.020, RSMo, provides in pertinent part:

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.

Section 550.040, RSMo, provides:

In all capital cases, and those in which imprisonment in the penitentiary is the sole punishment for the offense, if the defendant is acquitted, the costs shall be paid by the state; and in all other trials on indictments or information, if the defendant is acquitted, the costs shall be paid by the county in which the indictment was found or information filed, except when the prosecutor shall be adjudged to pay them or it shall be otherwise provided by law.

Section 550.140, RSMo, provides:

The clerk of the court in which any criminal cause shall have been determined or continued generally shall, immediately after the adjournment of the court and before the next succeeding term, tax all costs which have accrued in the case; and

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if the state or county shall be liable under the provisions of this chapter for such costs or any part thereof, he shall make out and deliver forthwith to the prosecuting attorney of said county a complete fee bill, specifying each item of services and the fee therefor.

It has been said that costs which are definite and fixed by law are required by statute to be taxed in the first instance by the clerk of the court, a purely ministerial duty. In re Thomasson, 119 S.W.2d 433 (St.L.Ct.App. 1938).

It is our view that the above statutory provisions indicate that the costs about which you inquire may, in the proper instance, be taxed against the state under §§ 550.020 or 550.040.

Very truly yours,

JOHN ASHCROFT
Attorney General