

LIQUOR CONTROL: Upon granting of permanent injunction under the Liquor Control Act, all costs must be paid by the defendant owner of the property or the defendant in the cause.

November 20, 1939

Honorable Arkley Frieze  
Prosecuting Attorney  
Dade County  
Greenfield, Missouri

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Dear Sir:

We acknowledge receipt of your request for an opinion dated November 16, 1939, which reads as follows:

"I would appreciate very much an opinion from your office on the following question: In September 1937 the Prosecuting Attorney of this County brought an action to enjoin a cafe where beer was sold on the ground that it constituted a public nuisance. A hearing was held by the court in November of that year and by the decree of the court a permanent injunction was ordered against this place of business by the court. At the hearing of this action testimony was taken from witnesses for both the State and defendants. Thereafter, a cost bill, including the costs made by the State was made up by the Circuit Clerk and paid by the County Court (the costs made by the defendants of course was not paid). A fee bill was issued by the Clerk prior to the making up of the cost bill and a Nulla Bona return made by the Sheriff. Defendants owned and lived upon the premises where this cafe was located. Thereafter the defendants in the Injunction suit conveyed this property to a third person who was unaware that a judgment had been rendered against the defendants in the

injunction act. All of the costs in the action amounted to \$83.05. The County Court paid its costs which amounted to \$60.70. If the purchaser pays the defendant's costs which amount to \$22.35 I would like to know whether the judgment lien will be satisfied or whether the entire amount could be collected by an execution as against the premises formerly owned and occupied by the defendants."

From the facts stated in the above request, I am presuming that the trial court in its discretion did not adjudge the plaintiff to pay part of the costs. It also states that the county court paid part of the costs which amounted to \$60.70, and I am presuming that the county court in paying these costs was merely paying obligations which should have been paid by the defendant.

The injunction described in your request may be either a common law injunction or an injunction set out under Section 44-a-10, Laws of Missouri, 1935, page 283, which partially reads as follows:

"That an action to enjoin any nuisance defined in this act may be brought in the name of the State of Missouri by the Attorney General of the State of Missouri, or by any prosecuting attorney or circuit attorney of any county or city in the State of Missouri. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. \* \* \*"

According to your request, a permanent injunction was ordered against this place of business and I am presuming against the owner at that time. Under a permanent judgment of this nature, the costs are part of the judgment and considered as a judgment not only against the property but also against the defendant.

Section 1242, R. S. Mo. 1929, reads as follows:

"In all civil actions, or proceedings of any kind, the party prevailing shall recover his costs against the other party, except in those cases in which a different provision is made by law."

Under Section 44-a-10, Laws of Missouri, 1935, page 283, no other provision is included as to the assessment of the costs, and therefore the judgment for costs should be adjudged under Section 1242, supra.

That the costs are a part of the judgment was upheld in the case of *Minor v. Garhart*, 122 Mo. App. 124, 1. c. 126, where the court said:

"This case was simply a total finding of all issues against the plaintiff. There was nothing in the proceeding had in the trial court to bring into operation the discretion of the court and the costs should not have been divided between the parties as the law placed the entire obligation upon the losing party. (Hawkins v. Nowland, 53 Mo. 328; DuPont v. McLaran et al., 61 Mo. 511; Turner v. Johnson, 95 Mo. 452; Bender v. Zimmerman, 135 Mo. 58; Schumacher v. Mehlberg, 96 Mo. App. 598.)"

Under the above holding, it should be held on the statement of facts set out in your request that there is nothing in the proceeding to bring into operation the discretion of the court in assessing the costs between the State and the defendant.

In cases where part of the issues are found for the plaintiff and part of the issues are found for the defendant, the court in its discretion may allow a judgment for part of the costs against the plaintiff and for part of the costs against the defendant, but where all of the issues are found

for the plaintiff, the court would abuse its discretion in allowing some of the costs against the plaintiff and some of the costs against the defendant. It was so held in the case of Huggins v. Hill, 236 S. W. 1054, 1. c. 1055, where the court said:

"In a separate paragraph the judgment further provided that--

"'The defendant, Lena G. Hill, shall recover from the plaintiff one-half of all costs taxed in this case.'

"It is from this part of the judgment that the appeal is taken.

"In approaching the question before us for review, we are fully cognizant of the general rule that in an equity case the allowance of costs is within the discretion of the trial chancellor, and will not be disturbed when no abuse of that discretion has been shown. We are also aware of the doctrine in this state that where substantial issues are found partly for the plaintiff and partly for the defendant, the trial court has discretion to apportion the costs. Bender v. Zimmerman, 135 Mo. 53, 36 S. W. 210; Bobb v. Wolff, 54 Mo. App. 515; Plant Seed Co. v. Michel, 37 Mo. App. 313; Schumacher v. Mehlberg, 96 Mo. App. 598, 70 S. W. 910; Kittredge v. Chillicothe L. & B. Ass'n, 103 Mo. App. 361, 77 S. W. 147. However, in the instant case an examination of the report of the referee, as well as of the judgment rendered thereon, fails to disclose any substantial issue found for respondent."

You also state that since the time that the judgment was made permanent the defendant conveyed his property to a third person who was unaware that a judgment had been rendered against the defendant in the injunction action. Since the in-

junction action was not appealed, and I am presuming a judgment was rendered for all of the costs against the defendant, the costs, being a part of the judgment, would be a lien against the property, in accordance with Section 1103, Laws of Missouri, 1935, page 207, which reads as follows:

"Judgments and decrees rendered by the Supreme Court, by any United States District or Circuit Court held within this state, by the Kansas City Court of Appeals, the St. Louis Court of Appeals, the Springfield Court of Appeals, and by any Court of Record, shall be liens on the real estate of the person against whom they are rendered, situate in the county for which or in which the court is held."

You also ask if the lien would be satisfied by payment of part of the costs accrued by the defendant in the amount of \$22.35. As the judgment lien now stands in the office of the Clerk of the Circuit Court, it would be necessary that the full amount of all costs be paid before the lien would be considered satisfied. All that is necessary would be an execution on the property in the full amount for the reason that the statute of limitations does not run.

Section 1105, R. S. Mo. 1929, reads as follows:

"The lien of a judgment or decree shall extend as well to the real estate acquired after the rendition thereof, as to that which was owned when the judgment or decree was rendered. Such liens shall commence on the day of the rendition of the judgment, and shall continue for three years, subject to be revived as hereinafter provided; but when two or more judgments or decrees are rendered at the same term, as between the parties entitled to such judgments or decrees,

the lien shall commence on the last day of the term at which they are rendered."

Under the above section, the judgment for costs on the permanent injunction action is still in force and by proper execution can be collected by the State.

CONCLUSION

In view of the foregoing authorities, it is the opinion of this department that upon the granting of a permanent injunction in favor of the State and against certain real estate and the owner thereof either by way of an equitable common law injunction or an injunction under the Liquor Control Act, the judgment for costs may be collected by proper execution and is not barred within a period of three years from the time of the judgment. It is further the opinion of this department that by the payment of part of the judgment by an innocent purchaser of property upon which the judgment for costs in the injunction suit was a lien will not release the full amount of the judgment and it can only be released by the payment of all of the costs.

Respectfully submitted

W. J. BURKE  
Assistant Attorney General

APPROVED:

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COVELL R. HEWITT  
(Acting) Attorney General

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