COURT REPORTERS: FEES: Construction of Section 485.100, MoRS Cum. Supp. 1955. Time when official court reporter may submit bill for making up a transcript requested by the court on an appeal by a poor person. When state or county is liable for such costs. Procedure for reimbursement to county by state when liability is that of state.

June 11, 1956

Honorable J. Marcus Kirtley
County Counselor, Jackson County
202 Courthouse
Kansas City, Missouri

Attention: Mr. Richard H. Koenigsdorf,
Assistant County Counselor.

Dear Sir:

This will acknowledge receipt of your request for an opinion which reads:

> "At the instruction of J. Marcus Kirtley, County Counselor of Jackson County, I am writing you requesting an opinion as to the effect upon the County of the amendment made by the Legislature in 1955 to Section 485.100 of the Revised Statutes pertaining to payment of court reporters' fees for transcript upon pauper appeal in criminal cases. The change in the statute appears to shift the responsibility for payment of such fees from the State to the County so that the reporters need not have the long delay as heretofore in getting their fees paid.
>
> "This slight change in the statute leaves a number of questions unanswered and apparently presents a budget item to the county which was not considered. We have just received one bill from a court reporter requesting immediate payment of the cost for the transcript of one William D. Mace who was sentenced to the State Penitentiary and is presently incarcerated there pending the outcome of his appeal which was filed as a poor person.

"It would be appreciated if consideration would be given to the following questions and an opinion provided:

"1. At what point in the proceedings is the Court Reporter entitled to submit a bill to the county?

"2. When is the County required to approve a voucher and make payment?

"3. From what funds should such vouchers ordinarily be paid - - General Funds, Circuit Court Funds, or other funds?

"4. How is determination made as to whether reporters' fees are taxed against county or state in light of this statute?

"5. If the county pays the fees and then they are taxed against the state, what is the procedure for the county to be reimbursed?"

We are inclined to be of the opinion that the main purpose for the Legislature enacting Section 485.100, MoRS Cum. Supp. 1955, was to provide a method to expedite payment of fees to the court reporter for making up a transcript on appeal. It is well known that reporters in the past in certain instances were required to wait an unusually long time for their fees for preparing such transcripts and occasionally this would run into considerable sums. Having this in mind we shall now examine the pertinent statutes.

You request a construction of Section 485.100, MoRS Cum. Supp. 1955, which reads:

"For all transcripts of testimony given or proceedings had in any circuit court, court of common pleas or court of criminal correction, the court reporter shall receive the sum of forty-five cents per twenty-five line page for the original of said transcript, and the sum of fifteen cents per twenty-five line page for each carbon copy thereof; the page to be approximately eight and one-half inches by eleven inches in size, with left-hand margin of approximately one and one-half inches and the right-hand margin of approximately one-half inch; answer to follow question on same line when feasible; such page to be designated as a legal page. Any judge, in his discretion, may

> order a transcript of all or any part of the evidence or oral proceedings, and the court reporter's fees for making the same shall be paid by the county, upon a voucher approved by the court and taxed against the state or county as may be proper. In criminal cases where an appeal is taken by the defendant, and it appears to the satisfaction of the court that the defendant is unable to pay the costs of the transcript for the purpose of perfecting the appeal, the court shall order the same to be furnished, and the court reporter's fees for making the same shall be paid by the county, upon a voucher approved by the court, and taxed against the state or county as may be proper; and in such case the court reporter shall furnish two transcripts in duplication of the notes of the evidence, for the original of which he shall receive forty-five cents per legal page and for the copy fifteen cents per page."

Prior to said section becoming effective, Section 485.100, Laws Mo. 1951, page 449, was the prevailing law and it specifically required that such costs shall be taxed against the state or county as may be proper and reads, in part:

> "* * *Any judge may, in his discretion, order a transcript of all or any part of the evidence or oral proceedings for his own use, and the court reporter's fees for making the same shall be taxed in the same manner as other costs in the case; Provided that in criminal cases where an appeal is taken or a writ of error obtained by the defendant, and it shall appear to the satisfaction of the court that the defendant is unable to pay the costs of such transcript for the purpose of perfecting the appeal, the court shall order the same to be furnished and the court reporter's fees for making the same shall be taxed against the state or county as may be proper; and in such case the court reporter shall furnish two transcripts in duplication of the notes of the evidence, for one of which he shall receive the sum of 45 cents per legal page for the original, but shall receive no compensation for the other."

A casual reading of the foregoing statute discloses that the repealed statute merely provided that the court reporter's fees for making said transcript shall be taxed against the state or county as may be proper, while the present law, Section 485.100, MoRS Cum. Supp. 1955, requires that the court reporter's fees for making said transcript shall be paid by the county upon a voucher approved by the court and taxed against the state or county as may be proper.

You first inquire at what point in the proceedings is the court reporter entitled to submit a bill to the county?

It will be seen that under Section 485.100 MoRS Cum. Supp. 1955, it does not indicate that such costs shall forthwith be paid by the county upon a voucher neither does it indicate when this shall be done. However, in view of what we consider the legislative intent as hereinabove expressed, which was to expedite payment of such fees, certainly they should not be withheld until a fee bill for all costs in the case is prepared by the clerk of the court after adjournment of court, as provided in Section 550.140 MoRS 1949.

We believe a reasonable and sensible construction should be placed on such statute and that should be that as soon as a transcript is prepared, and certified to by the court and prosecuting attorney, the court should then approve a voucher for said cost without any delay. This more or less conforms to Section 550.220, MoRS 1949. Subsequent thereto it can be determined whether the county or state shall be charged with such costs and if it should be an obligation of the state then the state may reimburse the county therefor.

We believe your second inquiry has been answered hereinabove along with your first one.

In your third inquiry you ask from what fund said voucher shall be paid?

Section 50.550, MoRS 1949, provides for an annual budget for counties of the first class which shall contain adequate provisions for various expenditures among which is the cost of holding circuit court in such county. Therefore, we are of the opinion that such expenditure should be paid out of the fund hereinabove provided for the holding of circuit court in such county.

In inquiry numbered 4 you ask as to how it may be determined whether said reporter's fee for the transcript prepared shall be taxed against the county or state?

Apparently such fee is still considered as a court cost as shown under Section 485.100, Laws Mo. 1951, page 449, and as indicated in the same section of Cum. Supp. 1955. To determine whether the county or state shall be taxed for such fee we refer you back to Chapter 550, MoRS 1949, which clearly specifies just who shall pay the costs, and especially refer you to Sections 550.020, 550.030 and 550.040, particularly dealing with whether the county or state shall pay costs in the case. These statutes are followed by others indicating that under certain conditions and circumstances the prosecuting attorney or complainant shall be liable for costs.

We do not consider it necessary to deal with the question further as a careful reading of said chapter will enable you to determine under the particular facts and circumstances whether the county or state is liable for such costs.

Your fifth and last inquiry is, if the county pays the fees and subsequently it is determined that such fees are an obligation of the state, just what is the procedure for reimbursing the county?

In such instances we are of the opinion that the county clerk would present to the circuit clerk an itemized certification of fees paid and the circuit clerk would include such itemization in his cost bill submitted to the state comptroller.

CONCLUSION

Therefore, it is the opinion of this department that:

(1). When a person convicted of a felony appeals as a poor person and the official court reporter is requested by the court to make a transcript, said reporter may submit a bill to the county for his fee for such service rendered at any time after said transcript has been prepared and certified to by the court and prosecuting attorney and the voucher is approved by the court.

(2) As stated hereinabove, the voucher for such fee must be approved by the court and paid after the fee is duly certified to by the circuit court and prosecuting attorney.

(3) Such fee should be paid from the fund for payment of expenses of the circuit court as provided in Section 50.550, MoRS 1949.

(4) Said fee shall be taxed against the county or state under the facts and circumstances in each individual case and as provided in Chapter 550, MoRS 1949.

Honorable J. Marcus Kirtley

(5). If the county pays such fee and it is later determined that it is an obligation of the state the county clerk would present to the circuit clerk an itemized certification of fees paid and the circuit clerk would include such itemization in his cost bill submitted to the state comptroller.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Aubrey R. Hammett, Jr.

Yours very truly,

John M. Dalton
Attorney General

ARH:mw