

CRIMINAL COSTS--Liability of county or state for costs.

3827-28
R.S. No 1929.

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Hon. Frank K. Ashby
Prosecuting Attorney
Mississippi County
Charleston, Missouri

Dear Sir:

Your letter addressed to this department has been assigned to me for answer. After reading your letter, I gather the following statement of facts, to-wit:

Mander Carr was charged with murder in the first degree. He entered a plea of not guilty and upon that issue a trial was had, resulting in a conviction of a crime of a lesser degree, and punishment fixed at a jail sentence and fine. Thereafter, a proper cost bill was certified to the County Court of Mississippi County and by them paid.

QUESTION: Was the State liable for the cost incurred by the prosecution in said case?

Section 3827 R.S. 1929, read thus:

"When the defendant is sentenced to imprisonment in the County jail, or to pay a fine, or both, and is unable to pay the cost, the county in which the indictment was founded or information filed shall pay the cost, except such as were incurred on the part of the defendant."

In this case the defendant was charged with first degree murder. Had he been acquitted, it is the opinion of this department that the state would have been liable for such cost, under Section 3828 R.S. 1929. However, the facts are he was convicted of a lesser degree of crime, than that he was charged with, and his punishment fixed at a jail sentence and fine; therefore, the liability of cost is fixed under the section herein copied--Section 3827, Supra.

This department holds that before the State can be made liable to pay the cost in a criminal prosecution, it is necessary that the defend-

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ant should be convicted of a capital offense, or that he should be sentenced to imprisonment in the penitentiary. Neither of these occurrences took place in this case.

Although the information was for a capital crime and under it the defendant might also have been convicted of a felony, punishable by imprisonment in the penitentiary, yet it is also true it was competent to find him guilty of a less degree or grade of crime by which the punishment would be reduced to imprisonment in the County jail or by such imprisonment coupled with a fine. Such was your case. It is the conviction and sentence which fixed the liability for cost. Being convicted and sentenced to pay a fine and serve a jail sentence fixed the liability upon the county in which the information was filed, State ex rel v. Carpenter, 51 Mo. 555. Had the defendant been acquitted under the charge as filed, then in that case the State would have been liable for the cost. State ex rel Timberman v. Hackman, 302 Mo. 273. We therefore hold that the State was not liable for the cost in this case.

We regret that you have been delayed in receiving this opinion but other matters, which we had under consideration when this assignment reached us, required our attention.

Very truly yours,

APPROVED

W. W. Barnes
Assistant Attorney General.

ATTORNEY GENERAL.