

CRIMINAL CODE: Under Section 3832, R. S. No. 1929.

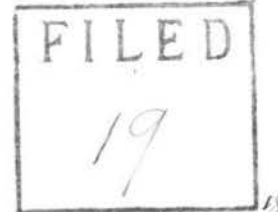
" " State must pay the cost accruing on failure to convict on penitentiary charge.

CIRCUIT CLERK'S CHANGE OF VENUE FEES--Sections 11786 and 11815 R. S. No. 1929.

NEPOTISM -Right of Collector to employ brother-in law's wife as a deputy.

LC 3832 R.S. No. 1929

April 25, 1933.



Hon. W. W. Crockett
Prosecuting Attorney
Ball's County
New London, Missouri

Dear Mr. Crockett:

Some time ago while you were in the office you made inquiry with reference to criminal costs in this, to-wit:

Is the State liable for the costs in a homicide case where the defendant was exonerated in the preliminary hearing, the complaint therefor being filed by the prosecuting attorney?

In this connection your attention is called to Section 3832, R. S. No. 1929, wherein it is provided:

"If a person, charged with a felony, shall be discharged by the officer taking his examination, the costs shall be paid by the prosecutor or person on whose oath the prosecution was instituted, and the officer taking such examination shall enter judgment against such person for the same, and issue execution therefor immediately; and in no such case shall the state or county pay the costs."

Under that section of the statute it is to be observed that when the defendant is discharged the law specifically provides that, "in no such case shall the state or county pay the costs".

An opinion was recently rendered from this department pertaining to the liability of the State for criminal costs, written by Mr. Geo. B. Strother, an Assistant in this office, to Hon. James H. Keith, Prosecuting Attorney of Iron County, which opinion may be of interest to you and a copy of which is herewith enclosed.

In accordance with your request we are also enclosing you herewith a copy of a former opinion with reference to the fee of a circuit clerk in a change of venue case.

With reference to your inquiry as to the right of a sheriff to appoint his son-in-law as a deputy sheriff, we are enclosing an opinion written by Mr. Gilbert Lamb, an Assistant in this office, to Mr. Elbert L. Ford, Prosecuting Attorney, Kennett, Missouri, upon the same subject matter.

Your inquiry upon this matter included the further proposition as to the status of relationship between the sheriff and the proposed appointee where the wife of the son-in-law was deceased, leaving surviving a child or children.

Supplementing the opinion of Mr. Lamb to include the latter proposition stated, be advised that in 2 C. J. 379, we find the following declaration of law:

"Death of the spouse terminates the relationship by affinity. If, however, the relationship has resulted in issue who are still living, the relationship by affinity continues."

This proposition, so far as we have been able to ascertain, has never been passed upon in this State. The declaration in Corpus Juris finds support in Indiana, Massachusetts, New York, Texas and Virginia, which cases are cited in the footnote. The declarations of law supporting the principle in Corpus Juris are not arrived at from a state of facts similar to those presented, but the question is raised in most of the cases with reference to the right to serve upon juries when a relationship existed within the prohibited degrees as fixed by the respective statutes. Following the reasoning, however, in those cases, it is our opinion that the son-in-law of the sheriff, under the facts stated, would not be eligible for appointment under our statute.

Yours very truly,

CARL C. ABINGTON
Assistant Attorney-General.

APPROVED:

ROY McATTRICK
Attorney-General.