

CRIMINAL COSTS--Board and medical attention furnished by whom, in  
change of venue cases.

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8-23  
August 10th, 1833



Hon. Ray Crow,  
Prosecuting Attorney,  
Chariton County,  
Keytesville, Missouri.

Dear Sir:

We have your request of August 7th, 1833 for an opinion upon the following state of facts:

"Otis Thornton, charged with a felony took a change of venue during the May Term of our Court and the case was sent to Linn County. Otis was taken to that county and the case was set for the June Term. At that term a continuance was requested and granted and a transfer made to the Brookfield Term. Thornton had been in jail in Chariton County eleven months before being taken to Linn County. Charge, highway robbery with a weapon which is not bailable. In a telephone communication today I have been advised that he is seriously ill with some venereal disease that is affecting his eyesight and that his general condition was bad and requesting that our county court allow them to call in medical attention, other than their county physician, and asking that Chariton County pay the expense. Apparently the reason for additional medical attention is that their county physician is not qualified or situated to properly treat the case.

In view of the above, would Chariton County be liable for the medical attention furnished a prisoner being held in confinement in another county awaiting trial for an offense committed in this county and when such prisoner has requested and obtained a change of venue?

Also, would our county be liable for the board bill of such prisoner?"

Whenever a change of venue is taken in a criminal case, and the case transferred from one county to another, all costs properly chargeable to a county are to be paid by the county wherein the case originated.

Section 3846, R. S. of Mo. 1929 provides:

"In any criminal cause in which a change of venue is taken from one county to any other county, for any of the causes mentioned in existing laws, and whenever a prisoner shall, for any cause, be confined in the jail of one county for an offense committed in another county, and in which costs are liable to be paid out of a county treasury, such costs shall be paid by the county in which the indictment was originally found or the proceedings were originally instituted."

Section 3847, R. S. of Mo. 1929 provides:

"The bill of costs in any case, as provided for in the foregoing section, \* \* \* shall be presented to the county court in which the indictment was originally found, or proceedings instituted, and shall thereupon be paid as if the cause had been tried or otherwise disposed of in said county."

We are now confronted with the question of whether or not the original county, from which a change of venue has been taken, is liable for medical services and the board of such person while awaiting trial. The answer to this question depends upon whether or not medical services and food are "costs" chargeable to a county.

The sheriff receiving such prisoner on change of venue shall

"take charge of and keep the prisoner in the same manner as if he had been originally committed to such jail."  
Section 3639, R. S. of Mo. 1929.

The duties of the sheriff with reference to furnishing food and medical attention are fully set out in Section 3533, R. S. of Mo. 1929, as follows:

"SEC. 3533. FOOD, CLOTHING AND MEDICAL ATTENDANCE TO BE PROVIDED. Whenever any person, committed to jail upon any criminal process, under any law of this state, shall declare, on oath, that he is unable to buy or procure necessary food, the sheriff or jailer shall provide such prisoner with food, for which he shall be allowed a reasonable compensation, to be fixed by law; and if, from the inclemency of the season, the sickness of the prisoner or other cause, the sheriff shall be of the opinion that fuel, additional clothes or bedding, medicine and medical attention are necessary for such prisoner, he shall furnish the same, for which he shall be allowed a reasonable compensation."

Food for the prisoner and medical services when necessary, are expenses of imprisonment and are to be taxed as costs. Section 3534, in part, reads as follows:

"The expenses of imprisonment of any criminal prisoner, such as accrue before conviction, shall be paid in the same manner as other costs of prosecution are directed to be paid."

It was the clear intention of the lawmaker to have the "board" of a prisoner in a county jail taxed as costs of the case. This is apparent from the following two sections of the statute which we quote in part:

Section 11794:

"Hereafter sheriffs, marshals and other officers shall be allowed for furnishing each prisoner with board, for each day, such sum, not exceeding seventy-five cents, as may be fixed by the county court of each county."

Section 11795:

"It shall be the duty of the county courts of each county in this state at the November term thereof in each year to make an order of record fixing the fee for furnishing each prisoner with board for each day for one year commencing on the first day of January next thereafter, and it shall be the duty of the clerk of the county court to certify to the clerk of the circuit court of such county a copy of such order, and the same shall be filed in the office of the clerk of the circuit court for the use of the said clerk and the judge and prosecuting attorney in making and certifying fee bills."

Section 3825, R. S. of Mo. 1929 recognizes that "board" is a part of the costs of the case, and is to be paid by either the State or county. Section 3825 provides:

"Whenever any person shall be convicted of any crime or misdemeanor he shall be adjudged to pay the costs, and no costs incurred on his part, except fees for board, shall be paid by the state or county."

Whenever medical services become necessary for a prisoner in a county jail, the county court of the county wherein the prisoner is confined may:

"allow a moderate compensation for medical services, \* \* \* furnished any sick prisoner, which shall be paid out of the treasury of the county in which the cause originated." Section 3840, R. S. of Mo. 1929.

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Under this last section, it is the duty of the county court, wherein the prisoner is kept to fix the compensation for medical services, and it is the duty of the county from which the case was transferred by change of venue, to pay for such medical services.

It is therefore the opinion of this office that it is the duty of the sheriff or jailer, or the county court, of the county wherein the prisoner is confined to furnish such prisoner the necessary food, and also furnish sick prisoners with the necessary medical services. Both of these items are to be charged as costs and paid by the county from which the case was transferred on change of venue.

Respectfully submitted,

FRANKLIN E. REAGAN,  
Assistant Attorney-General

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APPROVED:

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ROY McKITTICK  
Attorney-General