

CRIMINAL COSTS: Physician's service ordered by state to examine defendant not part of State's costs.

May 5, 1933

Honorable Robert W. Hawkins
Prosecuting Attorney
Pemiscot County
Caruthersville, Missouri



Dear Sir:

This is to acknowledge your letter which is as follows:

"At a recent trial, the Circuit Judge ordered on application of the State that certain physicians go examine a defendant for the purpose of determining whether or not said defendant was able to come to court and meet the charge against him.

Please advise if it is possible to allow the physicians pay for the service; and if so, how can the cost be entered so that the Auditor will allow same".

You have not stated enough facts in your letter and for that reason we will have to assume certain premises. We assume from the context of your letter the following: First: That the defendant was on bond. Second: The purpose of the examination was to ascertain his physical condition solely. Third: That the charge against him was punishment solely by imprisonment in the penitentiary. Fourth: That the defendant was convicted.

Our opinion is determined from the premises that the pay for the service should be chargeable to the State and not as part of the defendant's cost. We therefore treat it from the stand point of whether it is chargeable to the State.

We have searched the statutes and find none that permits the State to pay as costs for such service rendered as set out in your letter.

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One is not entitled to a fee unless he can point to a statute expressly allowing the same. The law conferring such right must be strictly construed because of statutory origin.

In the case of State v. Union Trust Company, 70 Mo.A. l.c. 315, the court said:

"We repeat, as we have decided in several cases, "that the entire subject of costs, in both civil and criminal cases, is a matter of statutory enactment; that all such statutes must be strictly construed, and that the officer or other persons claiming costs, which are contested, must be able to put his finger on the statute authorizing their taxation."
Ring v. Vogel, 46 Mo. App. 374."

See also: State v. Wofford, 116 Mo. 320.
State ex rel. v. Oliver, 116 Mo. 188.

It is our opinion from the above and foregoing that in view of no statutory provision expressly allowing same, that it is not a proper charge for the State and thus we find no way that the cost of same may be entered so that the Auditor will allow it.

We have reached our conclusion as to the liability for the payment of this as costs in a criminal case as being strictly a statutory one, and the question of justice or injustice to the physicians in not being paid for their services is not a matter for consideration here.

Trusting this answers your inquiry, we are

Yours very truly,

JAMES L. HORNOSTEL
Assistant Attorney General.

APPROVED _____
Attorney General.