

Relating to Fees of Prosecuting Attorneys in  
Change of Venue.

September 26, 1933

10-2



Hon. Morgan H. Boulder,  
Prosecuting Attorney,  
Candenton, Missouri

Dear Sir:

This department acknowledges receipt of your letter dated August 26, 1933, in which you state and inquire as follows:

"Recently I followed and prosecuted a criminal case which was sent to Polk County, change of venue from Camden County, Missouri, the charge was first degree murder. Defendant at second trial entered a plea of guilty and was sentenced to the State Penitentiary.

Section 11316, R. S. of Missouri, 1929, provides, among other things, that "And in all cases, civil and criminal, in which change of venue may be granted, it shall be his (Prosecuting Attorney) duty to follow and prosecute or defend, as the case may be, all said causes, for which in addition to the fees now allowed by law, he shall receive his actual expenses." Prior to the part of section quoted the Section refers and provides that Prosecuting Attorney shall represent in their respective counties the State and County. I represented the State and State only in the prosecution of the case of State vs. J. H. Hardy, which was changed to Polk County, and at the first trial there was a hung jury, and I made several trips and charged state what I thought was a very small expense, considering the distance and time spent in Bolivar at the two trials. I charged a total of \$24.00 expense, and the State Auditor refused to allow the same for the reason that it was his opinion that the

State was not required to pay such expense. County officers exist and the Sheriffs and other law enforcing officers are handicapped because of the lack of funds to enforce the law. I refer to the small counties and when the high and mighty at Jefferson City, without reason or law, strikes out a charge or fee of county officers and yet continues to employ plenty of fancy help for himself, causes me to believe that I certainly was not justified in rubbing the rubber off of my tires in the last primary and general elections for Democracy and the former candidates that are now in office at Jefferson City.

Now, that I have relieved myself of the tension, I request and will appreciate your opinion as to who, State or County, shall pay the expenses of the Prosecuting Attorneys in prosecuting a State case on change of venue.

I call attention to the fact that the last part of Section 11316 providing for County to pay expense of Prosecuting Attorney or the \$25.00 fee on cases to Court of Appeals, would be in cases of appeals where defendant was convicted of misdemeanor. I am sure that Sections 3826 and 11316 covers the question."

Section 11316 R. S. 1929, reads as follows:

"The Prosecuting Attorneys shall commence and prosecute all civil and criminal actions in their respective counties in which the county or state may be concerned, defend all suits against the state or county, and prosecute forfeited recognizances and actions for the recovery of debts, fines, penalties and forfeitures accruing to the state or county; and in all cases, civil and criminal, in which changes of venue may be granted, it shall be his duty to follow and prosecute or defend, as the case may be, all said causes, for which, in addition to the fees now allowed by law, he shall receive his actual expenses. When any criminal case shall be taken to the courts of appeals by appeal or writ of error, it shall be their duty to represent the state in such case in said courts, and make out and cause to be printed, at the expense of the county, and in cities of over 300,000 inhabitants, by the city, all necessary abstracts of record

and briefs . . . . .  
to be audited and paid as other claims are aud-  
ited and paid by the county court of such county,  
and in such cities by the proper authorities of  
the city.

This statute makes it the duty of the prosecuting attorney to represent the state and county in all criminal and civil cases, where change of venue is taken, and specifies that in the performance of that duty he shall, in addition to the fees now allowed by law, receive his actual expenses. Those duties are required of him unconditionally and therefore it is mandatory upon the County Court to pay a prosecuting attorney his actual expenses in such cases.

We hold that it is not such cost in the case, as is chargeable in the cost bill certified to the State Auditor to be paid by the State, but an obligation of the County. The intention of the Legislature clearly appears from this part of said section,

"To be audited and paid as other claims  
are audited and paid by the county court of such  
county."

We further hold that section 3826 R. S. 1929, has no application here. The Legislature has made no provision for the pecuniary compensation of those who prosecute in criminal cases to be paid by the State.

Yours very truly,

W. W. Barnes

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Assistant Attorney General

APPROVED

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Attorney General.