

COURT COSTS: Neither State nor county liable for expert witness fees.

3-28

March 22, 1934.



Hon. John B. Brooks,
Presiding Judge County Court,
Grundy County,
Trenton, Missouri.

Dear Sir:

This department acknowledges receipt of your letter of February 10, 1934 wherein you make the following inquiry:

"We are in doubt whether we can legally allow and pay the enclosed bills. The defendant is serving a term in the penitentiary. Is this not a case for the State to pay? Please return the bills.

Should an agreement be made between the prosecuting attorney and the county court before the above expense was incurred?"

I.

R.S. Mo. 1929 are the guide in determining whether County or State shall pay costs in a criminal case.

In determining whether or not the costs in a criminal case are legally and rightfully chargeable to the county or state, depending on the gravity of the crime, of course, we must be guided solely by the statutes of our state. We have examined same thoroughly, particularly Secs. 3827, 3828, 3820, 3829, 3850 and 3855, R.S. Mo. 1929 and are unable to find any statute wherein either the State of Missouri or the particular county is liable for expert witness fees in a criminal case.

It is a well established principle of law that costs cannot be recovered except in cases where the statutes specifically

provide for the same. In the case of State ex rel. v. Wilder, 197 Mo., l.c. 32, the Court said:

"The sole question arising from the facts alleged by the relator and admitted by the State Auditor, is whether the State is liable for the costs claimed by the relator. For many years this court, in obedience to strict statutory provisions, has sedulously maintained that no costs can be taxed except such as the law in terms allows. (Shed v. Railroad, 67 Mo. 687; Crouch v. Plummer, 17 Mo. 420; State ex rel v. Hill, 72 Mo. 512; Williams v. Chariton County, 85 Mo. 646)"

Likewise, the authorities are reviewed in the decision in the case of City of Greenville v. Farmer, 195 Mo. App., l.c. 211-212, as follows:

"It is the well settled law of this State and the country at large that the right to tax costs is purely made by statute; No such right existed at common law; and unless there is a statute authorizing the taxing of costs against the plaintiff, the order of the circuit court is erroneous. It was held in the case of State ex rel. Clarke v. Wilder, 197 Mo. 27, 94 S.W. 499, that no costs can be taxed in any court except such as the statute in terms allows. In Ring v. Chas. Vogel Paint & Glass Co., 46 Mo. App., l.c. 377, the following language is used: '****It may be stated 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.' (See also: State v. Union Trust Co., 70 Mo. App. l.c. 315). McQuillin on Municipal Corporations Vol. III, Sec. 1070, lays down the rule that costs cannot be awarded unless expressly provided for and that at common law they were not recoverable in either a criminal or civil proceeding, and that it has often been held in the absence of statute providing therefor that costs cannot be taxed against a city in cases for violation

of ordinances regardless of whether there was an acquittal or a conviction. 11 Cyc. 278 states the rule that a city, town or village is never liable for costs for proceedings under its ordinances whether the defendant be acquitted or convicted unless a statute so provides, and that this is true whether the proceeding is considered civil or criminal; and that (p. 289) in the absence of statutes so providing, costs of an appeal to an intermediate court from a judgment for violation of an ordinance or on certiorari to such court are not taxable against a municipality."

CONCLUSION

In the absence of any statutory authority, it is the opinion of this department that neither the State nor the County is liable for the expert fees as shown by the attached statement. As per your request, we are herewith returning said statement.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General

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