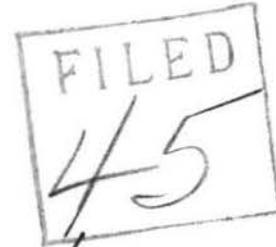


COUNTY BUDGET LAW: Costs in criminal case should be paid out of funds in Class 2, Sec. 2, Laws 1933, p. 341, rather than revenue of year in which defendant entered plea of guilty.

November 9, 1934.

11-20-34



Hon. W. Irvin Jackson,  
Prosecuting Attorney,  
Wright County,  
Hartville, Missouri.

Dear Sir:

This department is in receipt of your letter of some time ago requesting an opinion as to the classification of certain criminal costs under the new Budget Law. Your letter is as follows:

"Under the County Budget law found at page 340 of the 1933 Session Acts, circuit court costs, including the fees of all witnesses, are classified and payable out of Class No. 3.

In my county the following state of facts has arisen on which you will please render your opinion:

In the latter part of 1931 one J.S. was charged in the circuit court of Wright County, Missouri by information filed by the Prosecuting Attorney with the crime of leaving the scene of an accident. Later a change of venue was granted from this county and the case was sent to Webster County. At the fall term 1932 of the Webster County Circuit Court J.S. entered a plea of guilty to the crime charged and was fined \$500.00 and the costs. A part of the costs was paid by the said J.S. but none of the fine was ever paid, and at the January Term of the 1934 Circuit Court of Webster County the Hon. C.H. Skinker paroled the said J.S. as to the fine and costs. The Circuit Clerk of Webster County in turn made his cost bill, which was in due course approved by myself and the Circuit Judge.

The question is, shall this cost be paid out of Class No. 3 of the 1934 county revenue or shall it be paid out of that year's revenue at which the plea of guilty was made?"

Section 2 of the County Budget Law, Laws of Mo. 1933, page 341 is as follows:

"\* \* \* Class 2: Next the county court shall set aside a sum sufficient to pay the cost of elections and the cost of holding circuit court in the county where such expense is made chargeable by law against the county except where such expense is provided for in some other classification by this act. This shall constitute the second obligation of the county and all proper claims coming under this class shall have priority of payment over all except class 1. \*\*\*\*"

Under Section 5 of the County Budget Law, classes of expenditures, Laws of Mo. 1933, page 344, the estimated expenditures are explained. Class 3 is as follows:

"Expense of conducting circuit court and election, not to include the salary of any officer or employee on a yearly salary nor deputy or assistant of any kind whatever though on irregular time, such shall be estimated for under class four. Class 3 shall include pay of jurors, witnesses if properly paid by the county, and other incidental court costs, pay of judges and clerks of elections and all other expense of elections chargeable against the county. This estimate shall not be less than last preceding even year in even years and last preceding odd year in odd numbered years."

By the wording as contained in Class 3, supra, it is plainly set forth that "witnesses if properly paid by the county, and other incidental court costs" shall be paid out of said class. We assume that the defendant in the instant case finally entered a plea of guilty to the misdemeanor charged.

Section 3827, R.S. Mo. 1929 provides as follows:

"When the defendant is sentenced to imprisonment in the county jail, or to pay a fine, or both, and is unable to pay the costs, the county in which the indictment was found or information filed shall pay the costs, except such as were incurred on the part of the defendant."

Under the above section, the county is liable for the costs when the defendant is insolvent. The question next arises, following the steps you have set forth in your letter, as to when the costs are finally due and payable in a criminal case, disregarding the fact that it may or may not be the county's duty to pay the costs. In the case of *State ex rel. v. Buchanan County Court*, 41 Mo., 1.c. 257, the Court said:

"The judgment for costs in every criminal case where there is a conviction necessarily follows as a part of the punishment inflicted. The conviction of the defendant is the evidence fixed by the statute for determining his liability to pay the costs of the prosecution. If the conviction is for a felony and he is unable to pay them, the costs are then paid by the State; if for a misdemeanor, by the county. What difference can it make to the county whether he is tried and convicted of the offense charged against him, or voluntarily confesses the charge to be true? In either case he would be required by the judgment of the court to suffer the penalty imposed by law. In this case the judgment of the court entered upon his own voluntary assumption to pay the costs was sufficient to bind him for that purpose. In other words, he has by his own act fixed his liability to pay the costs, and if unable to pay them, the county is just as much bound as if his liability had been fixed by law. We can perceive no reason why the services rendered in issuing the execution were not as necessary as any others charged for. It was perhaps the most satisfactory way in which the ability of the defendant to pay costs could be determined. In any event it followed as a necessary incident to the judgment against the defendant,

and should be paid as well as the remainder of the bill."

In the decision in the case of State ex rel. v. Appleby, 136 Mo.1,c. 411, the Court said:

"Certain criminal costs are payable by the county, and, when bills of such costs, duly certified, are presented to the county court, a warrant for the payment of the amount thereof should be drawn upon the treasurer. R.S., Secs. 4397, 4400 and 4415."

Section 3841, R.S. Mo. 1929 provides:

"The clerk of the court in which any criminal cause shall have been determined or continued generally shall, immediately after the adjournment of the court and before the next succeeding term, tax all costs which have accrued in the case; and if the state or county shall be liable under the provisions of this article for such costs or any part thereof, he shall make out and deliver forthwith to the prosecuting attorney of said county a complete fee bill, specifying each item of services and the fee therefor."

Likewise, Section 3842, R.S. Mo. 1929 provides as follows:

"It shall be the duty of the prosecuting attorney to strictly examine each bill of costs which shall be delivered to him, as provided in the next preceding section, for allowance against the state or county, and ascertain as far as possible whether the services have been rendered for which charges are made, and whether the fees charged are expressly given by law for such services, or whether greater charges are made than the law authorizes, and if said fee bill has been made out according to law, or if not, after correcting all errors therein, he shall report the same to the judge of said court, either in term or in vacation, and if the same appears to be formal and

correct, the judge and prosecuting attorney shall certify to the state auditor, or clerk of the county court, accordingly as the state or county is liable, the amount of costs due by the state or county on the said fee bill, and deliver the same to the clerk who made it out, to be collected without delay, and paid over to those entitled to the fees allowed."

#### CONCLUSION

From the above sections and decisions, we are of the opinion that the costs in the criminal case as detailed in your letter are to be paid out of the funds in Class 2 of Section 2, Laws of Mo. 1933, page 341, rather than the revenue of the year in which the defendant entered his plea of guilty. This conclusion is based on the assumption that the defendant was insolvent and that the cost bill was properly certified by the Circuit Judge and the Prosecuting Attorney.

The costs in a criminal case sometimes extend over a period of years. The defendant may be charged by complaint, a preliminary held one year, and after numerous continuances, may be tried three years subsequent. In the end he may be acquitted, or he may be convicted and be insolvent, all of which conclusively proves that no costs are due in a criminal case until it is finally adjudged as to the party who is liable for the costs. When it is finally adjudged as to the proper party who should pay the costs, if it be the county, it is our opinion that it should be paid out of the funds in the year in which it was finally adjudged to be paid.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General

APPROVED:

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ROY MCKITTRICK,  
Attorney General

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