

CRIMINAL COSTS - Liability of State for defendant's  
costs where case is nolle prosequi.

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September 27, 1935 10-1



Honorable Forrest Smith  
State Auditor  
Jefferson City, Missouri

Dear Sir:

We have your request for an opinion,  
which is as follows:

" In Re: State vs. O. S.  
Hart, Lou Hart, Burr  
Davidson, Gladys Davidson.

This office is in receipt of a supplemental fee bill in the above entitled case which amounts to the sum of \$1475.29, and the contents of said bill contain costs that were made on behalf of the defendants only. Sometime ago the original bill in this case was filed in this office containing the cost now contained in the supplemental bill, and also the costs made on behalf of the State. The case at the November term, 1932, was continued generally and each term the Clerk certified the bill to this office for payment.

Your office handed down an opinion on January 22, 1934 wherein you held that the State was not liable for defendant's cost for the reason that at the time the case was continued generally, the Circuit Court did not tax the cost against the State.

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Thereafter, on April 25, 1935 a warrant was issued against said defendants to appear at the May term, 1935, of the Circuit Court of Ozark County and at that term of said court, the Prosecuting Attorney entered a nolle prosequi in this case and the Circuit Clerk has now certified to this office for payment the defendant's costs which were deducted from the original bill filed with the State Auditor.

We desire an opinion as to whether the State is now liable for the defendants' costs in this case."

In answering your request, it appears that a construction of Section 3828, R. S. Mo. 1929 is involved. That section in part is as follows:

"In all capital cases, and those in which imprisonment in the penitentiary is the sole punishment for the offense, if the defendant is acquitted, the costs shall be paid by the state; \* "

We note that the crime charged in the costs bill was bank robbery. This is a crime which comes within the terms of Section 3828, R. S. Mo. 1929 wherein imprisonment in the penitentiary is the minimum punishment for the offense.

The next question turns upon the meaning of the word "acquitted." In the case referred to in your request for an opinion, it appears that the charges against the defendant were dismissed. While the statute under consideration must be strictly construed, State ex rel. v. Wilder, 94 S. W. 495, 197 Mo. 27, the dismissal of a case is equivalent to an acquittal insofar as this statute is concerned.

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In State ex rel. v. Platte County (1890),  
40 Mo. App. 503, l.c. 506, the court said:

"The nolle prosequi amounted to an  
acquittal in the sense of the statute."

It is, therefore, the opinion of this office that the entering of a nolle prosequi in the above case imposed upon the State the burden of paying such costs as are properly chargeable in the case.

Respectfully submitted,

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APPROVED:

JOHN W. HOFFMAN, Jr.  
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