

COURT REPORTER: Fees for transcribing bill of exceptions in criminal cases where defendant is poor person.

March 10, 1936

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Mr. Edward O. Jackson
Official Reporter
Twenty-ninth Judicial Circuit
Clinton, Missouri

Dear Sir:

This is to acknowledge receipt of your letter of February 24, 1936, in which you request the opinion of this Department, which letter is as follows:

"At the opening of the September Term of our Circuit Court, Mr. E. B. Silvers filed a motion to quash the regular panel selected for that term by the county court, on the ground of illegality in its selection. Most if not all of the attorneys having business on the docket for that term either appeared or waived for their clients at its hearing. The hearing on the motion involved a week, and much testimony was taken. At its conclusion the motion was overruled. Subsequently Mr. Silvers represented one Arthur Hall in a trial which resulted in Hall's conviction and an appeal has been taken. The Court ordered me under the statute to make a Bill of Exceptions in the case State vs. Hall, which I have done. Mr. Silvers insists upon having the testimony taken on the hearing of the motion to quash the panel transcribed as a part of this bill of exceptions; he having objected to the panel in the Hall case, and incorporated his

motion in the record. I have hesitated to transcribe this record on the motion as being a proper part of the bill of exceptions, and if not the State would be under no obligation to pay me for the work. Of course, if the evidence taken on the motion to quash the jury panel is a proper part of the bill of exceptions in the Hall case, it would also be of all the other cases tried at the term on appeal where the point was made in the trial.

"I would like to have your opinion as to whether I could rely upon the State's payment for this work, even when supplemented by a further order of Judge Calvird's upon me to make the same. The Judge himself is doubtful as to whether I could expect the State to pay for this supplemental Bill, as it would be comparatively large."

If we understand your question correctly, it is - Whether or not the motion to quash the regular panel selected for the September Term of the Henry County Circuit Court, and the hearing and all the proceedings in connection with said motion, may be incorporated in the bill of exceptions in the case of State v. Arthur Hall, a case tried by said alleged improper jury, and whether or not the State would be compelled to pay you, as Official Court Reporter, costs and fees for transcribing the testimony taken on a hearing of the motion to quash, the court having made an order that the defendant, being unable to pay the costs of such transcript, be permitted to appeal as a poor person as provided in Section 11722, R. S. Mo. 1929.

Section 11719, R. S. Mo. 1929, sets forth the duties of the official court reporter, and is as follows:

"It shall be the duty of the official court reporter so appointed to attend

the sessions of the court, under the direction of the judge thereof; to take full stenographic notes of the oral evidence offered in every cause tried in said court, together with all objections to the admissibility of testimony, the rulings of the court thereon, and all exceptions taken to such rulings; to preserve all official notes taken in said court for future use or reference, and to furnish to any person or persons a transcript of all or any part of said evidence or oral proceedings upon the payment to him of the fee hereinafter provided."

Section 11722, R. S. Mo. 1929, provides in part as follows:

"* * * Provided that in criminal cases where an appeal is taken or a writ of error obtained by the defendant, and it shall appear to the satisfaction of the court that the defendant is unable to pay the costs of such transcript for the purpose of perfecting the appeal, the court shall order the same to be furnished and the court reporter's fees for making the same shall be taxed against the state or county as may be proper; * * * *"

From the statement made in your letter it would be impossible for this Department to render an opinion that would be binding on the State Auditor (assuming that the Hall case is a felony case) in auditing the costs, if eventually such cost bill should reach his office.

If the hearing on the motion to quash the panel was not part of the trial in the case of State v. Hall, we do not see how you could be required to incorporate same in the bill of exceptions in said case. In other

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words, if it was a separate and distinct hearing it would not properly be, in our opinion, a part of the bill of exceptions in the Hall case.

Since you state in your letter that, "if the evidence taken on the motion to quash the jury panel is a proper part of the bill of exceptions in the Hall case, it would also be of all the other cases tried at the term on appeal where the point was made in the trial," therefore, we must assume from your statement that it was not a part of the bill of exceptions or record in the Hall case. We not see how a separate and distinct hearing of an issue can be engrafted on to the Hall case by merely saying that it is a part of same.

It is impossible for us to give you a "Yes" or "No" answer on the statement in your letter, for the reason that we deem it a matter for the trial court to pass on, he having all the facts and circumstances before him on the record as made as to whether said hearing on the motion to quash should be made a part of the bill of exceptions in the Hall case. However, we might say that if it was stipulated and agreed and the court had made an order that this hearing be made a part of the bill of exceptions in the Hall case, and by an order of record the court ordered you to incorporate same as a part of the bill of exceptions, it would seem that you would be protected for your fees in the transcribing of same. Of course, to have said costs paid it would further be necessary later for same to be certified to by the Judge and Prosecuting Attorney as to its correctness, as provided by Section 3842, R. S. Mo. 1929, on the final disposition of the case.

Yours very truly,

APPROVED:

COVELL R. HEWITT
Assistant Attorney-General

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney-General

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