

CRIMINAL COSTS: Neither State nor County liable for payment of costs where persons charged with felony have been discharged by Justice of the Peace or any other officers taking their examination.

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April 8, 1937.

H-9

Honorable B. G. Dilworth  
Prosecuting Attorney  
Dent County  
Salem, Missouri



Dear Sir:

This will acknowledge receipt of your request for an opinion which reads as follows:

"Roy Mackie and Arlie Gibbs were charged, upon complaint by me, as Prosecuting Attorney of Dent County, of burglary in the second degree. No complaining witness signed the complaint, but the case was instituted on my own official oath and information before a Justice of the Peace, W. R. Peck of Dent County, Missouri.

"At the preliminary of these two defendants, they were discharged by the above mentioned Justice, who ruled that there was not sufficient evidence to warrant their being bound over to our Circuit Court.

"The cost bill in this case was made up and presented to me for approval; I consulted Honorable Forrest Smith, State Auditor, and his Criminal Cost Clerk, Marion Spicer, replied that in such a case, under Sections 3831 and 3832, neither the State nor the County would be liable in any costs, but judgment should be rendered against the person on whose oath the complaint was filed, save and except where the Prosecuting Attorney instituted the proceedings, he being relieved from such costs by Section 3510.

"I desire your opinion concerning whether

or not this County or the State is liable for any cost in this case. This situation will undoubtedly arise again and while your opinion is not stare decisis, yet the interested parties have agreed to accept your opinion as final."

We are enclosing a copy of an opinion dated February 27, 1937, written by the Honorable Olliver W. Nolen and approved by the Honorable J. E. Taylor, (Acting) Attorney-General, wherein the Sections 3831 and 3832 of R. S. Mo. 1929, mentioned in your request, are interpreted insofar as relates to the word "prosecutor" as used in these sections. You will also find that Section 3510, R. S. Mo. 1929, is interpreted as relates to the payment of costs by the Prosecuting Attorney.

You will note that the last two clauses of Sections 3831 and 3832, supra, reading,

"\*\*\*\*; and in no such case shall the State or county pay such costs.",

are plain, unambiguous and need no interpretation. In the case of Cummins v. Kansas City Public Service Company, 66 S. W. (2d) 920, l.c. 931, the Court, in speaking of the fundamental rule where the language of the statute is plain, said:

"It is, of course, fundamental that where the language of a statute is plain, there admits of but one meaning, there is no room for construction."

To the same effect is the ruling in the case of State v. Thatcher, 92 S. W. (2d) 640, l.c. 643.

#### CONCLUSION.

In light of the above, it is the opinion of this department that since the parties, mentioned in your request

for an opinion, were discharged by the Justice of the Peace, that neither the State nor the County shall be liable for the payment of costs.

Respectfully submitted,

APPROVED:

RUSSELL C. STONE  
Assistant Attorney-General.

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J. E. TAYLOR  
(Acting) Attorney-General.

RCS/afj  
Encl.