

SHERIFF'S FEES:) County where proceedings originally instituted
) liable for costs for transportation of prisoner on
CRIMINAL COSTS:) account of insufficiency of county jail.

August 9, 1937.

8-11



Honorable Willis H. Mitchell
Prosecuting Attorney
Douglas County
Ava, Missouri

Dear Mr. Mitchell:

This is to acknowledge your letter of recent date relative to the liability for the payment of the sheriff's fees for transportation of a prisoner in a certain criminal case. The facts necessary for the determination of the question, as gathered from your letter, are as follows:

One Johnny Huff was charged with murder in the first degree by an information filed in Douglas County. On application for a change of venue defendant's case was sent to Ozark County, where defendant was lodged in jail following the transfer of the case, not being admitted to bail. The case was continued from time to time and on account of the insufficiency of the jail in Ozark County, by order of court he was removed and confined in the County Jail of Greene County and Jackson County during the pendency of the case. The bill of the Sheriff of Ozark County, for transporting Huff to these jails for safekeeping, is \$280.00. The State Auditor has refused to audit and pay same.

Your question is, whether or not the State is liable for the cost of transporting, and if the State is not liable which of the two counties, Ozark or Douglas, is liable for same?

The question calls for an examination of the statutes pertaining to the payment of costs in criminal cases.

Section 3846, R. S. Mo. 1929, provides in part as follows:

"In any criminal cause in which a change of venue is taken from one

county to any other county, for any of the causes mentioned in existing laws, and whenever a prisoner shall, for any cause, be confined in the jail of one county for an offense committed in another county, and in which costs are liable to be paid out of a county treasury, such costs shall be paid by the county in which the indictment was originally found or the proceedings were originally instituted;
* * * * *

Section 11791, R. S. Mo. 1929, regulating the fees of sheriffs, county marshals and other officers in criminal cases, provides in part as follows:

"* * * and the expenses incurred in transporting prisoners from one county to another, occasioned by the insufficiency of the county jail or threatened mob violence, shall be paid by the county in which such case may have originated. * * *"

We think these sections of the statute provide the answer to your question as to which county is liable for the fees due the Sheriff of Ozark County. By these two sections it will be observed that the liability for this particular cost is not placed on the State of Missouri, but is a liability of the counties and the sole question to be determined is which of the two counties, Douglas or Ozark, is liable?

It is apparent that it was the intention of the Legislature to place the cost of transporting a prisoner, under the circumstances as outlined in your letter, on the county in which the case may have originated. In other words, the liability is placed where the actual crime was committed. We assume that the order of the court made in this case is sufficient and was occasioned by the insufficiency of the County Jail of Ozark County.

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It is, therefore, the opinion of this Department that the fees due the Sheriff of Ozark County for transporting the prisoner for safekeeping, under the orders of the Circuit Court, should be and are due and payable by Douglas County, as the case originated in that County.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

CRH:EG