

CRIMINAL COSTS: Prosecuting Attorney not personally
liable for costs in felonies and
misdemeanors.

February 27, 1937

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Mr. Arthur C. Mueller
Prosecuting Attorney
Gasconade County
Hermann, Missouri

Dear Sir:

This Department is in receipt of your letter
of February 25, wherein you make the following in-
quiry:

"Will you kindly give me your
opinion on the following matter,
to-wit:

"Is a prosecuting attorney liable
for costs in criminal cases when
he officially signs the complaint
and the cases are dismissed or
the defendant acquitted? Kindly
give me your opinion on this
question in both misdemeanors
and felony cases.

"Thanking you for your prompt
attention in this matter,"

There are no statutes making a prosecuting
attorney liable for costs that we can locate, nor have
we been able to locate any decisions placing the
liability for costs in a criminal case on the prosecut-
ing attorney. There are certain sections of our
statutes which make the prosecutor liable for costs;
the word "prosecutor", as used in the statutes, refers
to the prosecuting witness or to the person injured
and desiring a prosecution.

Section 3510, Revised Statutes Missouri 1929,
makes the prosecuting witness liable for the costs in
certain instances. We think it also decides the ques-
tion propounded by you, said section being as follows:

"When the information is based on an affidavit filed with the clerk or delivered to the prosecuting attorney, as provided for in section 3505, the person who made such affidavit shall be deemed the prosecuting witness, and in all cases in which by law an indictment is required to be indorsed by a prosecutor, the person who makes the affidavit upon which the information is based, or who verifies the information, shall be deemed the prosecutor; and in case the prosecution shall fail from any cause, or the defendant shall be acquitted, such prosecuting witness or prosecutor shall be liable for the costs in the case not otherwise adjudged by the court, but the prosecuting attorney shall not be liable for costs in any case."

The last clause to the effect "but the prosecuting attorney shall not be liable for costs in any case," therefore, we are of the opinion the prosecuting attorney is not liable personally for any costs in prosecuting misdemeanors and felonies.

We are further fortified in this conclusion by the fact that Kelley's Criminal Law and Procedure, an authority on criminal law, at page 10086 states:

"(a) And in every other case of acquittal if the justice or jury trying the case shall state in the finding that the prosecution was malicious, or without probable cause, the justice must enter judgment for costs against the prosecutor or party at whose

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instance the information was
filed, and issue execution
therefor; but in no case will
the prosecuting attorney be
personally liable for costs."

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

OWN:LC