

CRIMINAL COSTS: State not liable for cost of hospitalization of persons committing crimes.

October 12, 1938

Hon. Richard Chamier
Prosecuting Attorney
Randolph County
Moberly, Missouri



Dear Sir:

This is in reply to your request for an opinion of this department, which reads as follows:

"About midnight, March 31, 1936, Junior Jackson, a negro, was seen leaving a grocery store in Moberly, Randolph County, Missouri, by a city policeman. He was challenged by the policeman, ordered to stop, and fled. The policeman fired at him and struck him in the right leg, shattering the bone and producing a multiple fracture.

"He was taken by the city police to the city jail at Moberly, questioned by the city police, and by the prosecuting attorney and deputy sheriff of Randolph County. His physical condition was such as to demand immediate medical attention. Randolph County maintains no County hospital and there are no facilities in the county jail for hospitalization.

"The defendant, shot by a city policeman, was sent to the McCormick Hospital at Moberly with the knowledge and agreement of the Chief of Police of Moberly, Deputy

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Sheriff and Prosecuting Attorney of Randolph County. His condition was serious. He remained in the hospital from April 1, 1936 to June 11, 1936. During that time he was under constant supervision and control of city police and the county enforcement agencies. On June 11, 1936, he was transferred to the jail at Huntsville, Missouri.

"The case against Jackson was dismissed on August 3, 1936. There is some question as to whether or not the State is liable for the hospitalization. Defendant was charged with burglary and larceny.

It is our position that the State is liable for the costs. I enclose herewith certified copy of the cost bill in the above mentioned case and at your leisure would appreciate your advice and suggestions."

Based upon the statements of facts made in your letter, the following questions arise as to whether or not the hospital cost in question can be taxed as criminal costs in your case of State vs. Jackson, and we herein enumerate such questions:

I.

We note from your letter that Jackson was arrested and detained in the hospital from April 1st to the following June 11th without any criminal process having been issued. Under our statutes, an arrest can only be made by an officer upon the due issuance of a warrant by the filing of the proper affidavit. However, our State recognizes the common law rule of exception that where an officer sees an offense committed in his presence, he may arrest without warrant. However, there is no statutory nor common law authority for such officer, on making the arrest, to detain such person indefinitely without having the proper criminal process issued or obtained, to-wit, a warrant or a capias, and served upon such person so that legal detention or custody could thereafter follow. In point of fact, such detention beyond a period

of twenty hours is specifically prohibited under Section 3952, which reads as follows:

"All persons arrested and confined in any jail, calaboose or other place of confinement by any peace officer, without warrant or other process, for any alleged breach of the peace or other criminal offense, or on suspicion thereof, shall be discharged from said custody within twenty hours from the time of such arrest, unless they shall be charged with a criminal offense by the oath of some credible person, and be held by warrant to answer to such offense;
* * *"

In your case there is no reason shown or given why the sheriff or other officer could not have with reasonable promptness following the arrest, filed or caused to be filed an affidavit before a Justice of the Peace upon which a warrant could have been issued and served upon Jackson so as to have some legal foundation for his lawful detention thereafter. Consequently, without such showing, we believe that such detention of Jackson in the hospital from on or about April 1st to June 11th, during which time the hospital bill accrued, being an unlawful detention, the cost or expense thereof could not be lawfully taxed against the State in the case thereafter commenced against Jackson.

II.

There are three statutes pertinent here relative to the circumstances under which costs in a criminal case can be taxed against the State. We set them out in order as follows:

"Sec. 8533. Whenever any person, committed to jail upon any criminal process, under any law of this state, shall declare, on oath, that he is unable to buy or procure necessary food, the sheriff or jailer shall

provide such prisoner with food, for which he shall be allowed a reasonable compensation, to be fixed by law; and if, from the inclemency of the season, the sickness of the prisoner or other cause, the sheriff shall be of the opinion that fuel, additional clothes or bedding, medicine and medical attention are necessary for such prisoner, he shall furnish the same, for which he shall be allowed a reasonable compensation."

"Sec. 8534 The expenses of imprisonment of any criminal prisoner, such as accrue before conviction, shall be paid in the same manner as other costs of prosecution are directed to be paid; and those which accrue after conviction shall be paid as is directed by the law regulating criminal proceedings."

"Sec. 8554. In case any prisoner confined in the jail be sick, and, in the judgment of the jailer, needs a physician or medicine, said jailer shall procure the necessary medicine or medical attention, the costs of which shall be taxed and paid as other costs in criminal cases; or the county court may, in their discretion, employ a physician by the year, to attend said prisoners, and make such reasonable charge for his service and medicine, when required to be taxed and collected as aforesaid."

"We believe it is manifest that by reason of the terms used in these respective statutes, to-wit, in the first one, "whenever any person, committed to jail upon any criminal process," and in the second one, "the expenses of imprisonment of any criminal prisoner," and in the third one, "in case of any prisoner confined in any jail," together with the fact

that all three sections appear in an article of the statutes confined to "Jails and Jailers", that the medical attention mentioned in each of the three sections refers and is confined to a person or prisoner when and while confined in jail. It is obvious that there is nothing said in the statute with reference to the right of the sheriff to obtain hospitalization for any such prisoner, nor is there any mention in such sections that the expense of room, board and nurse attendance can be procured for a prisoner in a hospital and the expense of such room, board and nurse hire charged up to the State as costs in a criminal case."

Criminal costs, as well as civil costs, are solely a creature of the statutory law. Our Supreme Court in State ex rel. v. Wilder, 197 Mo. 1. c. 32, said as follows:

"For many years this court, in obedience to strict statutory provisions, has sedulously maintained that no costs can be taxed except such as the law in terms allows. (Shed v. Railroad, 67 Mo. 687, Crouch v. Plummer, 17 Mo. 420, State ex rel. vs. Hill, 72 Mo. 512, Williams vs. Chariton, 85 Mo. 646.)"

Likewise, in the case of Ring vs. Paint and Glass Company, 46 Mo. App. 1. c. 377, the court said:

"It may be stated that the entire subject of costs, in both civil and criminal cases, is a matter of statutory enactment; that all such statutes must be strictly construed, and that the officer or other person claiming costs, which are contested, must be able to put his finger on the statute authorizing their taxation."

// In other words, such statutes are strictly construed against the allowance of costs against the State, and it is not permitted by intendment or liberalization to read into such

statutes something that is not plainly provided for therein. Hence, we do not believe that there is sufficient justification for saying that the sheriff has the right to obtain hospitalization for anyone whom he might have lawfully in his custody, and we are constrained to the belief that the medical attention mentioned in the statutes means such medical attention as is the usual and customary attention provided for a prisoner while and when in the county jail.>

We appreciate the fact that it could be said that in the exigencies of this case, or any other like case, it was either better or possibly necessary that Jackson be taken to the hospital for medical attention rather than to procure such administrations in the jail. Assuming that such would be good argument, we believe that all that could be granted is that the hospital authorities in this case might be entitled to charge for the medical attention administered, that is to say the items enumerated in the hospital bill except for room, board and nurse. It is our belief that the hospital authorities were and are charged with knowledge of the provisions of the statute, and that when they undertook to render the medical attention to Jackson in the hospital, they did so charged with the knowledge that the expense for room, board and nurse could not be a justifiable charge against and collected from the State.

III.

It is to be noted that so far as any expense of medical attention and medicine which is provided for a person confined in jail, (or if, for the purposes of this case, we substitute the word "hospital" for "jail", in an effort to permit the allowance of such expenses to be taxed as costs in the case), it is manifest to us that if at the time such expense is incurred or accrued there is no prosecution or case commenced or pending, then there is no prosecution in force as

mentioned in Section 8534, supra, nor any case in existence as mentioned in Section 8554, supra, (within the meaning of the statutes) to which costs could be attributed. In other words, costs in a criminal case cannot accrue or come into existence until after and not before, the process of the court is called for and issued which creates a case. Without the legal existence of a case no foundation exists for the taxation of costs therein.

IV.

Section 3840 permits the county court, if it sees fit under any given case, to make an allowance for medical services given a prisoner who may be confined, whenever satisfied of the necessity of so doing. This statute, in terms at least, does not limit or prescribe the particular place of confinement. Hence, if there could be read into any of the statutes mentioned, by interpolation or otherwise, the word "hospital" or "hospitalization", which might include medical attendance, room, board, nursing, etc., then it may be that Section 3840 might give color for placing the claim of the hospital before the county court. No doubt such court could see that the action of the officers in question in procuring hospitalization for Jackson was at least a humane action, and hence the court might take some favorable action regarding the bill.

CONCLUSION

It is the opinion of this department, in view of the reasons hereinabove stated, that the taxation of the hospital bill in question, (at least so far as the item for room, board and nurse for \$218.00 is concerned), is not a lawful charge against the State in the case in question.

Respectfully submitted,

J. W. BUFFINGTON,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General