

PROSECUTING ATTORNEYS: Where two or more defendants are jointly charged and convicted, a prosecuting attorney fee should be assessed against each defendant.

April 7, 1938

Mr. Bryan A. Williams  
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Dear Sir:

In compliance with your request of March 30th for an opinion on the matter set forth in your letter, we are pleased to give you the following as the opinion of this department thereon. We here set forth your letter pertaining to the matter as follows:

"Referring to Section 11783, R. S. Mo. 1929--Fees of prosecuting attorneys, with reference to that part reading as follows:

' - - - for the conviction of every defendant in the circuit court, upon indictment or information, or before a justice of the peace, upon information, when the punishment assessed by the court or jury or justice shall be fine or imprisonment in the county jail, or by both such fine and imprisonment, five dollars,--'

"When two defendants are jointly charged upon an information and plead guilty to the charge and are given a fine, should the five dollar fee be assessed against each defendant? Misdemeanor charge and fined by Justice."

I.

In addition to that part of the above statute which you quoted, it further provides as follows:

"\* \* for the conviction of every defendant where the punishment assessed shall be by confinement in the penitentiary," etc.

Prior to 1887, the above statute, then Section 5596, R. S. Mo. 1879, so far as concerns the matter in question here, read as follows:

"\* \* for conviction in the circuit court upon indictment or before a justice of the peace, upon information, when the court, or jury, or both, shall be by fine or imprisonment in the county jail, or both such fine or imprisonment, five dollars (\$5.00); \* \* \* for conviction in any case where the punishment assessed shall be by confinement in the penitentiary," etc.

In 1886, the St. Louis Court of Appeals ruled in the case of In the Matter of Jerry Murphy and Jerry Spillane, 22 Mo. App. 476 where the defendants had been charged and convicted jointly and a fine and costs assessed as punishment, that the prosecutor was entitled to but one fee, or in other words, five dollars (\$5.00). Consequently, it might appear upon first impression, at least, that the question was settled.

The ruling in this case, however, was based upon the above Section 5596 of the 1879 statutes which was the law in force at the time of the court's decision and was quoted therefrom in the court's opinion.

It is to be noted that Section 5596 says, among other things:

" \* \* for conviction in the circuit  
court \* \* \* or justice of the peace  
\* \* \* five dollars (\$5.00)"

Again, in a subsequent part of the section,

"\* \* for conviction in any case" etc.

Subsequent to the ruling by the St. Louis Court of Appeals in the above case at the legislative session of 1887, Section 5596 was amended and has ever since stood in its present form.

By the amendment of the above section, there was added to the foregoing language of the statute, at both places where found in the section, the words "of every defendant", so that the law as changed and as it stands today is as follows:

"\* \* for conviction of every defendant in  
the circuit court \* \* \* or justice of the  
peace \* \* \* five dollars (\$5.00)."

Again,

"\* \* for conviction of every defendant  
in any case", etc.

It is fair to assume that when the Legislature of 1887 considered the amendment in question, it was aware of the ruling, of the St. Louis Court of Appeals made some six months or more prior to the convening of the legislative session, that the Court had construed the statute, as it stood at that time, to mean that it provided the allowance of <sup>more</sup> ~~more~~ than one fee or five dollars (\$5.00) to the prosecuting attorney when more than one defendant was charged at one and the same time.

Hence, by insertion in the statute of the words "every defendant" by the amendment of 1887, the only logical conclusion

to be reached is that the Legislature intended that thereafter the prosecuting attorney should receive a fee of five dollars (\$5.00) in a misdemeanor case (and a fee of a larger amount in a felony case) for the prosecution of each and every defendant, whether the charge is separately or jointly with other defendants, upon conviction; and that the Legislature of 1887 as a consequence of such amendment intended that the effect of the prior ruling of the St. Louis Court of Appeals would thereby be nullified.

In view of the fact that the above mentioned amendment to the 1879 law was the only amendment made and that it was made at the first opportunity following the above ruling of the Court of Appeals, the only reason that can sensibly be ascribed to such legislative action is that it desired the law or rule to be the exact opposite to that which the Court of Appeals had held on the question, that is to say, that the Legislature of 1887 decided that thereafter it should be specifically understood that prosecuting attorneys were not to be limited to one fee where defendants were jointly charged, whether in a misdemeanor or felony case, and that it (the Legislature) intended to expressly so provide by the language used and added by the amendment as shown above.

A well established rule of statutory construction is found in the case of *Fembroke v. Huston*, 180 Mo. 1.c. 636 wherein the court said:

"To get at the true meaning of language employed in a statute we must look at the whole purpose of the act, the law as it was before the enactment and the change in the law intended to be made."

Again, in the case of *Gum v. St. L. & F. Ry. Co.*, 220 S. W. 1.c. 704, the court said:

"In the interpretation of an amended statute, the state of the old law and the mischiefs arising thereunder are to be considered."

II.

CONCLUSION

We believe, in view of the state of the old law and interpretation given it by the St. Louis Court of Appeals, that if the above rules of statutory construction be applied to the amended law, which is the present law, it leads inevitably to the conclusion that where two or more defendants are indicted or informed against jointly and whereby convicted or plea of guilty and a fine or jail sentence, or both, is assessed as punishment, there should be assessed against each defendant a fee of five dollars (\$5.00) for the benefit of the prosecuting attorney.

Respectfully submitted,

J. W. BUFFINGTON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

JWB:RT