

CRIMINAL COSTS: In a preliminary the county or state is not liable for the costs when the defendant is discharged.

December 7, 1939

12-9

Hon. G. Logan Marr
Prosecuting Attorney
Morgan County
Versailles, Missouri

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Dear Sir:

We are in receipt of your request for an opinion, under recent date, which reads as follows:

"I want an opinion on the facts in this case.

"A felonious complaint was filed by a complaining witness against x, y, and z. The charge was stealing cattle. On the preliminary examination, x, who actually stole the cattle, and who sold the same, got up in court before the justice and took all the blame for the crime and exonerated y and z. The justice of the peace bound x over to the circuit court, and on a plea of guilty was sent to the penitentiary for the crime. y and z were discharged of implication in the crime and released. When the transcript in x case was certified to the circuit court, only the costs incident to the arrest and apprehension as to x was included in the costs. These costs include the sheriff costs as to the arrest, commitment and the mileage as to x. Now the justice of the peace presents a fee bill for the costs accrued in the apprehension and arrest of y and z, said costs being

made by the sheriff. These costs on y and z being those costs accrued prior to the preliminary examination.

"I want to know who is liable for these costs? Should these costs have been certified up to the circuit court by the justice as part of the costs in the case against x?"

Section 3831 R. S. Missouri, 1929, reads as follows:

"In all cases where any person shall be committed or recognized to answer for a felony, and no indictment shall be found against such person, the prosecutor, or person on whose oath the prosecution was commenced, shall be liable for all the costs incurred in that behalf; and the court shall render judgment against such prosecutor for the same, and in no such case shall the estate or county pay such costs."

Section 3832 R. S. Missouri, 1929, reads as follows:

"If a person, charged with a felony, shall be discharged by the officer taking his examination, the costs shall be paid by the prosecutor or person on whose oath the prosecution was instituted, and the officer taking such examination shall enter judgment against such person for the same, and issue execution therefor immediately; and in no such case shall the state or county pay the costs."

It will be noticed in both of the above sections the phrase "and in no such case shall the state or county pay the costs," appears. It will also be noticed that in section 3831 a mistake has been made by the printer

in which the word "estate" appears when it should be "state". Under the two above sections, and under the facts as stated in your request, neither the state nor the county is liable for the costs incurred in the prosecution of y and z.

Under section 3831, supra, the word "prosecutor" appears, which means any person other than the prosecuting attorney or state officer.

Section 3510 R. S. Missouri, 1929, partially reads as follows:

"* * * but the prosecuting attorney shall not be liable for costs in any case."

Inasmuch as section 3510, supra, states that the prosecuting attorney shall not be liable for costs in any case, and in view of the fact that under section 3831, supra, it is stated that in no such case shall the state or county pay such costs, it is very plain and unambiguous and needs no construction.

In the case of State v. Thatcher, 92 S. W. (2d) 640, 1.c.643, the court said:

"* * * the language of the enactment is perfectly clear and unambiguous. In such case there is nothing to construe, and no intent contrary to the evident intent can rationally or permissibly be implied. * "

CONCLUSION

In view of the above authorities, it is the opinion

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of this department that where three defendants are charged with a felony in a justice court, and, on the preliminary examination one of the defendants was bound over to the circuit court and two of the defendants are discharged, neither the state nor the county is liable for the costs pertaining to the two defendants who were discharged. If the complaint was signed by an individual other than the prosecuting attorney, the costs could be adjudged against the prosecutor, meaning the one who signed the complaint.

Respectfully submitted,

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APPROVED:

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WJB:RW