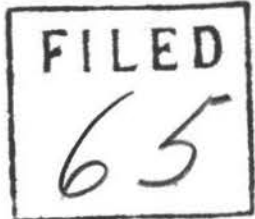


CRIMINAL COSTS: Parole is not a part of the case
in reference to payment of criminal
PAROLES: costs.

July 13, 1942

Hon. W. L. Mulvania
Prosecuting Attorney
Atchison County
Rock Port, Missouri



Dear Sir:

We are in receipt of your request for an opinion,
under date of July 9, 1942, which reads as follows:

"In the case of State vs. Basil C. Strong there was a conviction in this county on a charge of theft of a motor vehicle. The defendant was placed on parole after the sentence. The original fee bill was submitted to Atchison County, Missouri for payment on Jan. 22nd, 1940. When the parolee was to answer his parole at the February, 1941 term of the circuit court, information was given the court that the terms of defendant's parole had been broken. On this information the Court ordered a subpoena issued for 'Louis Stalcup, the Nightwatchman of the City of Mound City, Missouri, and for the day marshal for the city of Mound City, Missouri and for the deputy sheriff.' In response to this subpoena Mr. Hogan, Mr. Nauman and Louis Stalcup did appear in the Circuit Court as commanded. All the costs as allowed by the County Court under the original fee Bill were paid by the county to the county treasurer in February, 1940. A supplemental cost bill has been presented to the county court for payment of the fees of

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the witnesses who appeared in response to the above subpoena.

"The question therefore arises as to whether the county Court has a right to pay these costs which were incurred after the conviction and sentence of the defendant and which related to evidence bearing upon the question of the revocation of his parole. I would appreciate very much having your opinion upon this question."

The costs sections applicable to your request are Sections 4222 and 4225 R. S. Missouri, 1939.

Section 4222, supra, reads as follows:

"When the defendant is sentenced to imprisonment in the county jail, or to pay a fine, or both, and is unable to pay the costs, the county in which the indictment was found or information filed shall pay the costs, except such as were incurred on the part of the defendant."

Section 4225, supra, reads as follows:

"When such prosecutions are commenced by a public officer whose duty it is to institute the same, and the defendant is acquitted, the county shall pay the costs; if he is convicted, and unable to pay the costs, the county shall pay all the costs, except such as were incurred on the part of the defendant."

In the case of State ex rel Browning v. Kelly, 274 S. W. 731, l. c. 733, pars. 4,5, the court said:

"* * * The granting of a parole, therefore, whether it be deemed a conditional suspension of sentence or a conditional pardon is no part of the trial of a cause which culminates in a judgment of conviction, nor is it in any way incident thereto. * * * * *"

In the opinion in the above case it was definitely held that the parole proceeding is not incident in any way to the conviction or sentence in the case. Even if the parole proceeding was a part of the criminal case under Section 4232 R. S. Missouri, 1939, the officers mentioned in your request are not entitled to any fees if within five miles from the place of the hearing.

In the case of Nodaway County v. Kidder, 129 S. W. (2d) 857, pars. 5-8, the court said:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer. State ex rel. Evans v. Gordon, 245 Mo. 12, 28, 149 S. W. 638; King v. Riverland Levee Dist., 218 Mo. App. 490, 493, 279 S. W. 195, 196; State ex rel. Wedeking v. McCracken, 60 Mo. App. 650, 656."

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S. W. 532, 534; State ex rel. Binn County v. Adams, 172 Mo. 1, 7, 72 S. W. 655; Williams v. Charlton County, 85 Mo. 645."

Also, in the same case, at par. 16, the court said:

"The rule is stated in 15 O. J. 509, Sec. 176, as follows: 'Money paid to a county officer to which he is not entitled by law may be recovered back, without previous demand, in an action for money had and received instituted by the county.'"

We find no statutory authority for the payment of witness fees and mileage in the case of a parole hearing.

CONCLUSION

In view of the above authorities, it is the opinion of this department that the parole hearing is not a part of the case proper.

It is further the opinion of this department that the statute does not allow the county or State to pay witness fees and mileage to witnesses summoned to a parole hearing.

Hon. W. L. Mulvania

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It is, therefore, our opinion that the officers mentioned in your request should not be paid witness fees and mileage under a supplemental cost bill presented to the county court and if paid by the county through a mistake could be recovered from the witnesses by the proper action.

Respectfully submitted

W. J. BURKE
Assistant Attorney General

APPROVED:

VANE C. THURLO
Acting Attorney General

WJB:RW