

*Criminal Costs:*

COUNTY COURT: County Court must pay criminal costs in all cases properly certified, though such costs are not included in county budget; county judge incurs no personal liability in signing warrant where two-thirds of court vote to pay warrant; persons suffering from communicable diseases may be prosecuted for violation of rules and regulations of State Board of Health.

----- August 16, 1943 -----

Honorable W. C. Huffman  
Presiding Judge  
Dunklin County Court  
Kennett, Missouri

8/19

FILED 43
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Dear Judge Huffman:

This office is in receipt of your letter of recent date in which you request an opinion, which, omitting caption and signature, is as follows:

"Reference is made to your letter of a former date to Judge L. A. Pickard relative to payment to Sheriff of a commitment fee for committing persons to County jail.

"I have read that letter but am unable to give you the date it was written because it is now missing from the County Court's files.

"The present County Court is paying commitment fees to the Sheriff without the proper certification by the Prosecuting Attorney and the Circuit Clerk. I have voted to not pay these commitment fees without proper certification but have been out-voted.

"I would like to know if I am liable under any statute, and particularly Section 4240 R. S. 1939, for signing the warrant paying commitment fees by virtue of being Presiding Judge of the County Court where I have voted to not pay the

fees and merely sign the warrant to carry out the will of a majority of the court.

"Dunklin County is also being subjected to extra expense because of a campaign instigated by the U. S. Army to reduce venereal disease among the women associating with soldiers at the Malden Air Field. Twenty seven women were picked up last Saturday night and placed in the County Jail under quarantine by the State Health Department. I understand some will be released and some remain in the Jail, under quarantine, from 10 to 20 days for treatment and others will be picked up from time to time.

"I personally feel that this campaign was needed in this county and much good will come from it. However Dunklin County's budget for 1943 makes no provision for the additional expense involved on the County.

"The Sheriff is billing the County for a commitment fee in each instance and board per person at the rate of 75 cents per day.

"Will you kindly advise me if Dunklin County is liable for the commitment and board of these women quarantined by order of the State Health Department?"

Disposing of the matter of the payment of fees, we direct your attention to Section 4240, R. S. Mo. 1939, which reads as follows:

"Each and every bill of costs presented to any county court for allowance shall be examined and certified to by the judge and prosecuting attorney in the same manner, all necessary charges excepted,

as provided for certifying bills of costs to the state auditor for payment; and any county judge who shall pay, or vote to pay, any cost incurred in any criminal case or proceeding, unless the same is so certified to, shall be adjudged guilty of a misdemeanor."

This section provides the proper procedure for every fee bill presented to the County Court. See also Section 4246, R. S. Mo. 1939, which reads as follows:

"Whenever the state or county shall be liable under the provisions of this article, or any other law, for costs incurred in any examination of any felony, or in the trial of any misdemeanor before any justice of the peace, it shall be the duty of such justice to make out, certify and return to the clerk of the circuit or criminal court of the county a complete fee bill, specifying each item of service and the fee therefor, together with all the papers and docket entries in the case; and it shall thereupon be the duty of such clerk to make out a proper fee bill of such costs, which shall be properly and legally chargeable against the state or county, which shall be examined by the prosecuting attorney, and proceeded with in all respects as a fee bill made out for costs incurred in such court of record."

And further, Section 4247, R. S. Mo. 1939, which is the penalty section for those quoted above.

Having before us these acts of legislation we see that the duties of the court, the officers and the prosecuting attorney are clearly set out and these sections need no interpretation on our part. The duties are clear and stated in emphatic language.

Devoting ourselves to the question raised in your letter: "I would like to know if I am liable under any statute for signing the warrant paying commitment fees where I have voted not to pay the fees and merely sign the warrant to carry out the will of the majority of the court," your attention is directed to the provisions of Section 13831, R. S. Mo. 1939, which in part provides as follows:

"When the county court shall ascertain any sum of money to be due from the county, as aforesaid, such court shall order its clerk to issue therefor a warrant, specifying in the body thereof on what account the debt was incurred for which the same was issued, \* \* \* \* \*"

Your attention is further directed to the provisions of Section 13832, R. S. Mo. 1939, which in part provides as follows:

"Every such warrant shall be drawn for the whole amount ascertained to be due to the person entitled to the same, and but one warrant shall be drawn for the amount allowed to any person at one time, and shall be written or printed in Roman letters, without ornament. It shall be signed by the president of the court whilst the court is in session, attested by the clerk, \* \* \* \* \*"

(Emphasis ours.)

The provisions of these two statutes are clearly unambiguous and leave no room for construction. Whenever a warrant shall be drawn for an amount ascertained to be due, the majority of your court having ascertained that certain fees are due, then it is mandatory on the part of the president of the court, while court is in session, to sign such warrant. The mere signing of the warrant is purely ministerial and does not require the exercise of discretion on the part of the president

of the court. This is the interpretation we give to the word "shall" appearing in the section above. The president of the court, as such, if he refuses to sign the warrant, may be prosecuted under the provisions of the statute, Section 13843, R. S. Mo. 1939. It would seem then that in performing a purely ministerial function as president of the court no liability would fall on the president as such. We find a decision in point and merely cite same due to the extreme length of the opinion. *Cummins vs. Public Service Co.*, 66 S. W. (2d) 290. This decision is consistent with the theory that where a majority of the court shall ascertain a sum of money to be due then the president of the court may be required to sign the warrant by which payment may be made.

Concerning ourselves now with the question of criminal costs, we quote Section 4222, R. S. Mo. 1939, reading 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."

Also Section 4223, R. S. Mo. 1939, which reads as follows:

"In all capital cases, and those in which imprisonment in the penitentiary is the sole punishment for the offense, if the defendant is acquitted, the costs shall be paid by the state; and in all other trials on indictments or information, if the defendant is acquitted, the costs shall be paid by the county in which the indictment was found or information filed, except when the prosecutor shall be adjudged to pay them or it shall be otherwise provided by law."

It would seem from a reading of the above and foregoing that, even though the county had made no budget allowance for the additional expenses involved on the county, the county is still required to pay criminal costs presented during the current year.

Turning now to the portion of your request which involves the State Board of Health and the powers and duties of that board to safeguard health of persons in the state, counties, cities, villages and towns, we find that Section 9735, R. S. Mo. 1939, uses the following language:

"It shall be the duty of the state board of health to safeguard the health of the people in the state, counties, cities, villages and towns. It shall make a study of the causes and prevention of diseases and shall have full power and authority to make such rules and regulations as will prevent the entrance of infectious, contagious, communicable or dangerous diseases into the state. It may send representatives to public health conferences when deemed advisable, and the expenses of such representatives shall be paid by the state as provided in this chapter for expenses of the members of the state board of health."

Looking now to the penalty section, we find that Section 9750, R. S. Mo. 1939, uses the following language:

"Any person or persons violating, refusing or neglecting to obey the provisions of this article or any of the rules and regulations or procedures made by the state board of health in accordance with this article, or who shall leave any pesthouse, or isolation hospital, or quarantined house, or place without the consent of the health officer having jurisdiction, or who evades or breaks quarantine or

knowingly conceals a case of contagious, infectious, or communicable disease, or who removes, destroys, obstructs from view, or tears down any quarantine card, cloth or notice posted by the attending physician or by the health officer, or by direction of a proper health officer, shall be guilty of a misdemeanor."

The prosecution of persons with communicable diseases is based on the two statutes quoted above and, in order to elaborate upon the power of the State Board of Health to inaugurate legislation respecting control of venereal diseases, we enclose an opinion of this office given Dr. Harry F. Parker, State Health Commissioner, under date of November 16, 1939, which sets out in detail the duties of the said board. Further, we have appended to this opinion the amendments to the Missouri Public Health Manual as adopted by the Board on July 12, 1943. Taking these documents, together with this opinion, the writer believes you will have no difficulty in clarifying the situation in respect to the prosecution of persons found to be suffering from these diseases within your county.

#### CONCLUSION

From the above and foregoing, it is, therefore, the conclusion of this department that

(1) A county judge signing a warrant as president of the court, the majority of the court having determined the warrant was due an officer, is performing a ministerial act and in so doing incurs no personal liability;

(2) A county court is required to pay criminal costs despite the fact such costs have not been included in the county budget;

(3) Prosecution of persons found to be suffering from communicable diseases is provided for in the statutes and violations of the rules and regulations of the State Board of Health subject the accused violator to prosecution under

Hon. W. C. Huffman

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the statutes, and the county court is required to pay the usual fees.

Respectfully submitted,

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Assistant Attorney-General

APPROVED:

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ROY McKITTRICK  
Attorney-General

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