

CRIMINAL COSTS: City of St. Louis entitled to be reimbursed by
the state the actual cost for board of prisoners
MUNICIPALITY: in the city jail pending trial for certain
offenses.

June 16, 1951

Honorable E. L. Pigg
Comptroller
Department of Revenue
Jefferson City, Missouri



Dear Sir:

Under date of December 22, 1950, this department rendered an opinion to you relative to criminal costs wherein we held, among other things, that there was no liability of the state to reimburse the City of St. Louis for board of persons held in the city jail of St. Louis, Missouri, pending trial, as there was no statute providing for such liability.

Certain statutory provisions have been called to the attention of this department since rendering that opinion and in view of same, we have reconsidered the foregoing opinion as rendered and have concluded that insofar as the foregoing opinion relates to the reimbursement by the state to the City of St. Louis for such costs, it should be withdrawn and this be the controlling opinion as to that particular portion of the opinion.

Prior to the enactment of Senate Bill No. 1071 by the 65th General Assembly, now known and referred to as Section 221.100, RSMo 1949, the specific statutes that were repealed by that bill did specify the amount allowed for such expenses and that the State of Missouri should reimburse the City of St. Louis for same. However, the law enacted in lieu of the former one did not mention the City of St. Louis, but only certain counties. So, at first blush, it would appear in view of certain well established rules of statutory construction that by repeal of an act for reimbursement to said City and failure to enact legislation for reimbursement to said City for such costs, but by enacting legislation for reimbursement of costs to certain counties only, that the legislative intent was to provide for reimbursement to counties only and not to the City of St. Louis. One of the well known canons of statutory construction is that the expression of one thing is the exclusion of another. State ex rel. Kansas City Power and Light Co. v. Smith, 111 S.W. (2d) 513, 342 Mo. 75. Also, under the rule of strict construction requiring taxing statutes to be strictly construed, which include such costs as herein referred to, the intent of the Legislature was not to provide for any such reimbursement to the City of St. Louis for such costs.

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While it is true Section 221.100, supra, does not mention the City of St. Louis as being entitled to reimbursement for any particular amount, there are other statutes dealing directly with the matter that do specify under what conditions the City shall be reimbursed for such costs.

Section 221.110, RSMo 1949, provides:

"It shall be the duty of the municipal assembly of any city not in any county in this state on the first day of November of each and every year to fix the amount of the fee for furnishing each prisoner with board for each day for one year, commencing on the first day of January next thereafter."

Section 221.160, RSMo 1949, provides:

"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."

Section 550.010, RSMo 1949, provides:

"Whenever any person shall be convicted of any crime or misdemeanor he shall be adjudged to pay the costs, and no costs incurred on his part, except fees for board, shall be paid by the state or county."

Section 550.020, RSMo 1949, provides in part:

"1. In all capital cases in which the defendant shall be convicted, and in all cases in which the defendant shall be sentenced to imprisonment in the penitentiary, and in cases where such person is convicted of an offense punishable solely by imprisonment in the penitentiary and is sentenced to imprisonment in the county jail, workhouse or reform school because such person is under the age of eighteen

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years, the state shall pay the costs, if the defendant shall be unable to pay them, except, costs incurred on behalf of defendant."

Section 550.040, RSMo 1949, provides:

"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 certainly cannot be argued that the foregoing provisions providing that said City is entitled to said reimbursement by the state for board of prisoners in the city jail pending trial for certain offenses should be ignored, or that such provision shall have no force and effect in determining this question. The Legislature, in repealing or enacting new legislation, under the rules of statutory construction, is presumed to know all the laws in full force and effect at the time of such enactment. See *Smith v. Pettis County*, 136 S.W. (2d) 282, 345 Mo. 839; *Howlett v. Social Security Commission*, 149 S.W. (2d) 806, 347 Mo. 784. So, we must hold in view of this rule of construction that the Legislature knew of the law in effect at the time it enacted Section 221.100, supra, and that the legislative intent was for the state to reimburse the City of St. Louis as provided in the foregoing statutes that were not disturbed by the 65th General Assembly.

It is our understanding that the City of St. Louis has passed an ordinance in conformity with Section 221.110, supra. So, in view of this and also the foregoing conclusion, that the legislative intent was for the state to reimburse the City of St. Louis as provided in the foregoing statutes which were not amended or repealed by the 65th General Assembly, we are of the opinion the City of St. Louis should be reimbursed for the amount of board fixed by the ordinance passed by virtue of

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Section 221.110, supra, for board to prisoners in the city jail pending trial for those offenses mentioned in the foregoing statutes for which the state is liable.

CONCLUSION

It is the opinion of this department that the City of St. Louis is entitled to reimbursement in an amount fixed by ordinance of the City of St. Louis passed by virtue of Section 221.110, supra, as costs for board to prisoners in the city jail pending trial for only those offenses mentioned in Sections 221.160, 550.010, 550.020, 550.040, RSMo 1949, and for which the state is liable.

Respectfully submitted,

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APPROVED:

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