

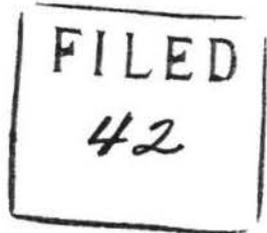
PRISONERS:  
CRIMINAL LAW:

Solvent convicted defendant in county of the third class liable for board bill accruing while committed to jail by lawful authority as part of costs.

February 17, 1953

OPINION NO. 42

Honorable Robert L. Hoy  
Prosecuting Attorney  
Saline County  
Marshall, Missouri



Dear Sir:

This opinion is written in response to your request dated January 29, 1953, which request for opinion reads, in part, as follows:

"This letter is being written at the joint request of the Magistrate, the Circuit Clerk and the Prosecuting Attorney of Saline County and respectfully requests a ruling on the questions hereinafter propounded. The questions have to do with the subject of the inclusion of the board bill of prisoners in counties of the third class in taxing the costs against a defendant who is solvent and able to pay the costs.

\* \* \*

"The first question which arises is whether or not in class 3 counties the board bill of a prisoner may ever be taxed as costs against a solvent defendant in view of the specific provision of Section 221.100 authorizing a board bill to be taxed as costs in class 1 and class 2 counties. If such board bill may not be taxed as costs against a prisoner in class 3 counties then the answer to the questions hereinafter propounded is pretty well settled. Assuming that such board bill may be taxed as costs and

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collected from the defendant by reason of the general provisions of sections 221.070 and 221.160 several practical questions arise with reference to the computation of the time of ascertainment.

"Now limiting this matter to class 3 counties and solvent defendants, may I propound you three questions:

"First, where defendant is arrested for a misdemeanor committed in the presence of the officer, e.g. careless and reckless driving, on a Saturday night, held over till Monday and pleads guilty or is convicted and fined, is there any way to include Sunday's board bill in the costs paid by the defendant? Apart from the practical matter of determining the amount, is he in jail 'committed by lawful authority' until the charge is filed and the defendant is brought before the court? If so, how is the amount determined?

"Second, where defendant is sentenced to jail by the Magistrate, e.g. thirty days for common assault, and, at the end of his sentence defendant wishes to pay his costs and be released, is his board bill accruing after he is committed for failure to give bond pending trial and/or his board bill accruing after sentence to be taxed as costs and collected from the defendant? If so, how is the amount determined?

"Third, where defendant is sentenced to the penitentiary and has accumulated a board bill pending trial in the Circuit Court, he failing to make bond after preliminary examination, and the defendant is financially able to pay, and execution would collect it, is the board bill, computed as provided for in section 221.090 and certified to the Circuit Clerk by the County Clerk in the same manner as if it were to be paid by the state, a proper charge to be included in the fee bill for which execution should issue? \* \* \*"

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We shall answer the questions in the order propounded.

The basic question is whether the board bill of a prisoner may ever be taxed as costs against a solvent defendant in a county of the third class.

To answer this we must resort to the specific statutes on the subject of criminal costs because costs were unknown to the common law, hence one's right to costs is wholly dependent on statutory provisions allowing them.

In the case of *In re Thomasson*, 159 S.W. (2d) 626, 1.c. 628, affirming 119 S.W. (2d) 433, the court said:

" \* \* \* In the first place costs were unknown to the common law and one's right to costs is now wholly dependent on statutory provisions allowing them. And such statutes are strictly construed. 7 R.C.L., Sec. 2, p. 781; *Van Trump v. Sannerman*, 193 Mo.App. 617 187 S.W. 124; *Ex parte Nelson*, 253 Mo. 627, 162 S.W. 167. \* \* \*"

As a further rule of construction, it is well established that all statutes on the same subject matter must be construed together so as to give effect to each, if possible.

Section 550.010, RSMo 1949, reads as follows:

"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." (Emphasis ours)

It appears from reading the above statute that the Legislature contemplated that fees for board would be included in the cost bill chargeable against the defendant and that such fees were part of the costs incurred on behalf of the defendant.

Reading this section together with Section 221.070, RSMo 1949, and Section 221.090, RSMo 1949, strengthens our conclusion that the board bill of a prisoner committed to the common jail by lawful authority would be taxed as costs against the defendant.

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Section 221.070, supra, reads:

"Every person who shall be committed to the common jail within any county in this state, by lawful authority, for any offense or misdemeanor, if he shall be convicted thereof, shall bear the expense of carrying him or her to said jail, and also his or her support while in jail, before he or she shall be discharged; and the property of such person shall be subjected to the payment of such expenses, and shall be bound therefor, from the time of his commitment, and may be levied on and sold, from time to time, under the order of the court having criminal jurisdiction in the county, to satisfy such expenses."

Section 221.090, supra, reads:

"1. In each county of the third or fourth class, the sheriff shall furnish wholesome food to each prisoner confined in the county jail. At the end of each month, he shall submit to the county court a statement supported by his affidavit, of the actual cost incurred by him in the boarding of prisoners, together with the names of the prisoners, and the number of days each spent in jail. The county court shall audit the statement and draw a warrant on the county treasury payable to the sheriff for the actual and necessary cost.

"2. When the final determination of any criminal prosecution in a county of the third or fourth class shall be such as to render the state liable for costs under existing laws, it shall be the duty of the county clerk to certify to the clerk of the circuit court or court of common pleas in which the case was determined, the amount due the county for boarding any prisoner who was a party in such case. It shall then be the duty of the clerk of

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the court in which the case was determined to include in the bill or costs against the state, all fees which are properly chargeable to the state for the board of such prisoners." (Emphasis ours)

The state or county is liable for certain criminal costs under certain conditions only in the event that the defendant is unable to pay them.

Section 550.020, RSMo 1949, provides in part:

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

Section 550.030, RSMo 1949, provides 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." (Emphasis ours)

Under Section 550.010, supra, the only costs incurred on behalf of a convicted defendant which the state or county in any event can be required to pay are the costs for board. Under Sections 550.020 and 550.030, supra, the state or county, as the case may be, is liable for that cost only if the convicted defendant is unable to pay.

We take it then that the board bill for a convicted defendant is "properly chargeable" (Section 221.090, supra) to the state in the event that the convicted defendant is unable to pay, subject, of course, to the other restrictions contained

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in Section 550.020, supra. We, therefore, do not believe that paragraph 2 of Section 221.090, supra, removes the liability of the convicted defendant for his board bill, but rather serves to clarify the fact that such item of expense is part of the costs to be assessed in the case.

Although Section 221.100, RSMo 1949, with respect to the board of prisoners in counties of the first and second classes, is phrased differently than Section 221.010, supra, we do not believe that it would have the effect of altering the conclusion above reached under other sections that the board bill of a convicted defendant in a county of the third class may properly be assessed against such defendant and collected from him if he be financially able to pay.

Having resolved the basic question, we now turn to the question designated "First" in the request for opinion.

Section 544.170, RSMo 1949, provides:

"All persons arrested and confined in any jail, calaboose or other place of confinement by any peace officer, without warrant or other process, for any alleged breach of the peace or other criminal offense, or on suspicion thereof, shall be discharged from said custody within twenty hours from the time of such arrest, unless they shall be charged with a criminal offense by the oath of some credible person, and be held by warrant to answer to such offense; and every such person shall, while so confined, be permitted at all reasonable hours during the day to consult with counsel or other persons in his behalf; and any person or officer who shall violate the provisions of this section, by refusing to release any person who shall be entitled to such release, or by refusing to permit him to see and consult with counsel or other persons, or who shall transfer any such prisoner to the custody or control of another, or to another place, or prefer against such person a false charge, with intent to avoid the provisions of this section, shall be deemed guilty of a misdemeanor."

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There is no question but that an officer has the authority to arrest without a warrant for a misdemeanor committed in his presence, and, under the last-quoted section, may have such person confined for not more than twenty hours. At the expiration of said twenty-hour period such person shall be discharged unless prior to such expiration he shall have been charged with a criminal offense by the oath of some credible person, and held by warrant to answer to such offense. It follows, therefore, that for the first twenty hours of the defendant's confinement under the hypothetical submitted he has been "committed \* \* \* by lawful authority" within the meaning of Section 221.070, supra. To rule otherwise would be to hold that the original confinement was unlawful and render Section 554.170, supra, meaningless.

After twenty hours have passed following the lawful arrest and confinement of a defendant without a warrant and the defendant has not been charged with a criminal offense by the oath of some credible person, and held by warrant to answer to such offense, it would seem that thereafter he is no longer "committed \* \* \* by lawful authority" and is entitled to be released. Board bill accruing thereafter should not be chargeable as costs. We realize that practical difficulties may present themselves under the hypothetical submitted, but we know of no exception to the twenty-hour rule contained in Section 544.170, supra, just because the twenty-hour period happens to expire on Sunday.

The amount of costs chargeable to the convicted defendant for board bill should be determined as provided in Section 221.090, supra. That amount is the actual and necessary cost incurred by the sheriff in the boarding of such prisoner.

Questions designated "Second" and "Third" in the request for opinion deal with other situations under which the defendant is committed to the jail. The basic problem presented in each of them is whether he has been "committed \* \* \* by lawful authority."

Section 532.460, RSMo 1949, with regard to bail, provides:

"When the imprisonment is for a criminal or supposed criminal matter, the court or magistrate before whom the prisoner shall be brought, under the provisions of this chapter, shall not discharge him for any informality, insufficiency or irregularity

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of the commitment; but if, from the examination taken and certified by the committing magistrate, or other evidence, it appear that there is sufficient legal cause for commitment, he shall proceed to take bail, if the offense be bailable, and good bail be offered; if not, shall commit the prisoner to jail."

Assuming no other defects in the proceeding, the defendant, is lawfully committed both after failure to make bail pending trial and after sentence whether before a magistrate or in the circuit court so that in either or both of such events the convicted defendant would be liable for costs for board accruing thereafter.

The fact that these costs accruing after having been "committed \* \* \* by lawful authority" and prior to actual conviction are to be treated the same as costs accruing after conviction is clarified by Section 221.160, RSMo 1949, which reads:

"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."

This would seem to answer both of the questions designated "Second" and "Third" in the request for opinion. Here again the amount would be determined as directed in Section 221.090, supra, l.c., the actual and necessary costs incurred by the sheriff in boarding such prisoner.

#### CONCLUSION

It is the opinion of this office that in a county of the third class the board bill of a convicted defendant is a part of the costs to be assessed in the case; that, if such defendant is solvent and able to pay the costs, such board bill should be included in the costs assessed against the defendant

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and he should be required to pay such costs among others; that a defendant is "committed \* \* \* by lawful authority" within the meaning of Section 221.070, RSMo 1949, if he is arrested by an officer without a warrant for a misdemeanor committed in the presence of the officer, but that after the expiration of twenty hours if no warrant has issued, he is no longer "committed \* \* \* by lawful authority;" that a defendant is "committed \* \* \* by lawful authority" within the meaning of Section 221.070, RSMo 1949, either after failing to make bail pending trial or after sentence whether before a magistrate or in the circuit court and that his board bill accruing after either of those dates should be included in the costs assessed against him; and that the amount of the board bill chargeable to such convicted defendant as costs is determined as set forth in Section 221.090, RSMo 1949, i.e., the actual and necessary costs incurred by the sheriff in boarding such prisoner.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John W. English.

Very truly yours,

JOHN M. DALTON  
Attorney General