

PROSECUTING ATTORNEY:
CRIMINAL COSTS:
CRIMINAL LAW:

Under the provisions of Sec. 56.310 RSMo 1949, the prosecuting attorney shall be allowed a fee of \$12.50 for the conviction of a defendant charged with armed robbery under the general criminal law, regardless of whether said defendant is committed to the State Board of Training Schools, or punishment is assessed at confinement in the State Penitentiary.



July 3, 1956

Honorable William T. Bellamy, Jr.
Prosecuting Attorney
Saline County
Marshall, Missouri

Dear Mr. Bellamy:

Reference is made to your request for an official opinion of this office, which request reads as follows:

"Differences have arisen between Mr. O. L. Peters, Supervisor of Criminal Costs of the Department of Revenue, Miss Edna Giger, our Circuit Clerk, and myself over the fee allowable to the Prosecuting Attorney under the provisions of Section 56.310 in a case where the defendant was charged with Armed Robbery and pled guilty to that charge and was sentenced to the Missouri State Board of Training Schools rather than to the penitentiary.

"In the particular case, the defendant was a young lady eighteen years old and under the provisions of Section 219.160, in the Court's discretion, was sentenced to the Training School at Chillicothe rather than to the penitentiary because it was the opinion of both the sentencing judge and prosecuting attorney that there was a possibility of rehabilitation.

"In any event, it is my feeling, as well as that of Miss Giger, that a conviction for Armed Robbery carries with it a fee of \$12.50 automatically regardless of the institution to which the defendant is sentenced. It was Mr. Peters' belief that there was a previous Attorney General's opinion holding that the state had authority to pay a prosecuting attorney fee only on a penitentiary sentence. It seems to me that Section 56.310 makes a special exception in the case of robbery to the usual rule.

"I would appreciate an opinion of clarification on this matter at your earliest convenience."

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Pursuant to our inquiry, you have supplied us with the additional information that the defendant in the case referred to was charged and convicted under the general criminal law and not under the juvenile code.

Section 56.310 RSMo 1949, provides in part as follows:

"Prosecuting attorneys shall be allowed fees as follows, unless in cases where it is otherwise directed by law: * * * for the conviction of every defendant in any case where the punishment assessed shall be by confinement in the penitentiary, except in cases of rape, arson, burglary, robbery, forgery or counterfeiting, ten dollars; for the conviction of every defendant of homicide, other than capital, or for offenses excepted in the last clause, twelve dollars and fifty cents; * * *".

Section 219.160 RSMo 1949, provides that upon conviction, a girl over the age of twelve years and under the age of twenty-one years may be committed to the state board of training schools. Said section reads as follows:

"Any boy over the age of twelve years and under the age of seventeen years and any girl over the age of twelve years and under the age of twenty-one years who has been convicted of a crime or who is found by the juvenile or circuit court to be in need of training school education and discipline may be committed to the state board of training schools. Except where a child who is convicted of a crime and sentenced for a period of time which will not expire until after his twenty-first birthday, all commitments to the board shall be made for an indeterminate period of time."

In the case recited, the defendant, a young lady eighteen years of age, plead guilty to a charge of armed robbery and was thereupon committed to the state board of training schools. The authority for such commitment is contained in Section 219.160, supra.

We note that Section 56.310 RSMo 1949, provides that the prosecuting attorney shall be allowed a fee of ten dollars for the conviction of every defendant in any case "where the punishment assessed shall be confinement in the penitentiary", except in cases of rape, arson, burglary, robbery, forgery or counterfeiting. The following clause of such section provides that the prosecuting attorney shall be allowed a fee of twelve dollars and fifty cents "for the conviction of every defendant of homicide, other than capital, or for the offenses excepted in the

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last clause" (rape, arson, burglary, robbery, forgery or counterfeiting). No requirement is herein contained that upon "conviction" the defendant's punishment must be assessed at confinement in the penitentiary. The word "conviction", as used in Section 56.310, has been held to mean a judgment in favor of the state in a criminal case on the merits. In re Murphy, 22 Mo. App. 476. Certainly the case which you have outlined would fall within this definition.

CONCLUSION

Therefore, it is the opinion of this office that, under the provisions of Section 56.310 RSMo 1949, the prosecuting attorney shall be allowed a fee of twelve dollars and fifty cents for the conviction of a defendant charged with armed robbery under the general criminal law, regardless of whether said defendant is committed to the state board of training schools, or punishment is assessed at confinement in the state penitentiary.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Very truly yours,

John M. Dalton
Attorney General

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