

CHANGE OF VENUE: When a misdemeanor case is filed in one
MISDEMEANORS: county, is taken on a change of venue to
COSTS: another county where the defendant is ac-
quitted, the county in which the informa-
tion was originally filed shall be liable
for the costs of the proceedings.



March 15, 1957

Honorable Donald P. Thomasson
Prosecuting Attorney
Bollinger County
Marble Hill, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"The Magistrate Judge of Bollinger County has requested that I get an opinion from you regarding the following question together with a statement of facts:

"Some months ago a complaint and information were filed in the Magistrate Court of Madison County, Missouri, the complaint being signed by R. C. Caldwell, Trooper, and the information by the Prosecuting Attorney of Madison County, charging one Victor Leon Harmon with careless and reckless driving. This case was sent to Bollinger County on a change of venue on the application of the defendant and the case was tried in the Magistrate Court of Bollinger County, Missouri and the defendant was acquitted. I would like to know who is to pay the costs in the case, whether Madison County or Bollinger County should pay the costs."

We would first direct your attention to Section 550.040, RSMo 1949, which reads:

"In all capital cases, and those in which imprisonment in the penitentiary is the sole punishment for the

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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."

In the situation which you present to us the information was originally filed in Madison County. We believe the above section is applicable to your situation.

We also direct your attention to Section 550.120, RSMo 1949, which reads:

"In any criminal cause in which a change of venue is taken from one county to any other county, for any of the causes mentioned in existing laws, and whenever a prisoner shall, for any cause, be confined in the jail of one county for an offense committed in another county, and in which costs are liable to be paid out of a county treasury, such costs shall be paid by the county in which the indictment was originally found or the proceedings were originally instituted; and in all cases where fines are imposed upon conviction under such indictments or prosecutions, or penalties or forfeitures of penal bonds in criminal cases, are collected, by civil action or otherwise, payable to the county, such fines, penalties and forfeitures shall be paid into the treasury of the county where such indictment was originally found or such prosecution originally instituted, for the benefit of the public school fund of the county."

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This would clearly seem to indicate that Madison County should be liable for the costs in the situation which you present, since it is the county in which the indictment "was originally found" and in which "the proceedings were originally instituted."

CONCLUSION

It is the opinion of this department that when a misdemeanor case is filed in one county, is taken on a change of venue to another county where the defendant is acquitted, that the county in which the information was originally filed shall be liable for the costs of the proceedings.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

HPW:lc