

MAGISTRATE COURT: Magistrate court costs in criminal cases for which
JURY FEES: the county is liable should be paid from class ~~five~~
COUNTY BUDGET: five expenditures under Sections 50.680 and 50.710,
RSMo 1949. Such costs must be paid whether or not
the county court has provided for the payment of such from class five
expenditures in their current county budget and, in event of such
failure, said costs may be paid from any surplus available in class
six or unused funds of other classes may be transferred to class five
in order to pay said costs.

July 8, 1959



Honorable James L. Paul
Prosecuting Attorney
McDonald County
Pineville, Missouri

Dear Mr. Paul:

This department is in receipt of your recent letter in which you request us to furnish you with our official opinion on the following questions:

"Where a defendant, charged with a misdemeanor, demands a jury trial and at the conclusion is acquitted, from which class should warrants be paid by the county?"

I assume that the answer to the above question will cover the following, but in the event it does not, please advise: Where a defendant, charged with a misdemeanor demands a jury trial and is found guilty and elects to lay his time out in jail rather than pay the cost, from which class should this be paid?"

Section 550.050, RSMo 1949, provides:

"1. Every person who shall institute any prosecution to recover a fine, penalty or forfeiture shall be adjudged to pay all costs if the defendant is acquitted although he may not be entitled to any part of the same.

2. When such prosecutions are commenced by a public officer whose duty it is to institute the same, and the defendant is acquitted, the county shall pay the costs; if he is convicted, and unable to pay the costs, the county shall pay all the costs, except such as were incurred on the part of the defendant."

It is also provided in Section 550.030, RSMo 1949, that the county shall pay the costs in a criminal case:

Honorable James L. Paul

"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."

The above quoted statutes require the county to pay the costs in a misdemeanor case, except those incurred by defendant, in two instances: (1) when the defendant is acquitted, and (2) when the defendant is convicted but unable to pay the costs. We would next direct your attention to Section 50.710, RSMo 1949, which provides that the county shall classify its proposed expenditures as follows:

"The court shall show the estimated expenditures for the year by classes as follows:

Class 1. Care of paupers declared by lawful authority to be insane (in state hospitals).

Class 2. Expense of conducting circuit court and elections, not to include the salary of any officer or employee on a yearly salary nor deputy or assistant of any kind whatever though on irregular time, such shall be estimated for under class four. Class two shall include pay of jurors, witnesses if properly paid by the county, and other incidental court costs, pay of judges and clerks of elections and all other expense of elections chargeable against the county. This estimate shall not be less than last preceding even year in even years and last preceding odd year in odd numbered years.

Class 3. Repair, upkeep and construction of roads and bridges on other than state highways and not in any special road district. List roads and bridges to be constructed.

Class 4. Pay or salaries of officers and office expense. List each office separately and the deputy hire separately. (County clerk shall prepare estimate for the county court but his failure does not excuse the court.)

Honorable James L. Paul

Class 5. Contingent and emergency expense.--
The county court may transfer any surplus funds from class one, two, three, and four to class five to be used as contingent and emergency expenses. Purposes for which the court proposes the funds in this class shall be used shall be shown.

Class 6. Amount available for all other expenses after all prior classes have been provided for. No expense may be incurred in this class until all the prior classes have been provided for. No warrant may be issued for any expense in class six unless there is an actual cash balance in the county treasury to pay all prior classes for the entire current year and also any warrant issued on class six. No expense shall be allowed under class six if any warrant drawn will go to protest; provided, however, if necessary to pay claims arising in prior classes warrants may be drawn on anticipated funds in class six and such warrants to pay prior class claims shall be treated as part of such prior funds. Nor may any warrant be drawn or any obligation be incurred in class six until all outstanding lawful warrants for prior years shall have been paid. The court shall show on the budget estimate the purpose for which any funds anticipated as available in this class shall be used."

(See also Section 50.680, RSMo 1949.)

We note and call your attention to the fact that there is no express provision for charging payment of magistrate court costs to any particular class of expenditures within the provisions of Sections 50.680 and 50.710, supra. In the old Missouri case of State ex rel. Vaughan et al. vs. Appleby et al., 136 Mo 408 (1896), the Greene County court refused to issue warrants for payment of certain criminal costs which had been duly certified to them for payment. In a mandamus proceeding to compel the court to pay the aforementioned costs, the Missouri Supreme Court ruled that criminal costs were to be denominated as contingent and thus payable from the class five or contingent county fund as provided by Section 7663, RSMo 1889.

It is not clear from reading this case whether the criminal costs were those of the circuit court or the magistrate court, but

Honorable James L. Paul

the court did construe Section 7663, supra, which reads, in part, as follows:

" * * * A sum sufficient for the payment of the other ordinary current expenses of the county, not hereinbefore specially provided for, which shall be known and designated as the contingent fund of such county; which last sum shall in no case exceed one-fifth of the total revenue of such county for county purposes for any one year."

The court in the above-mentioned case, in particular, had this to say concerning what class of expenditures criminal costs should be charged to: (l.c. p. 413)

"It is impossible for the court, in advance, to more than approximate that amount of money necessary to meet all proper demands for the respective purposes mentioned in section 7663. This is particularly so in respect to the demands that may be denominated 'contingent,' in which criminal costs are included. The liability of the county for criminal costs is not under the control of the county courts, is not created by them, nor is it in their power to so regulate it as to limit its amount to a sum within the funds set apart for its payment."
(Emphasis ours.)

In view of the above case and its ruling, we are of the opinion that the costs of a magistrate court in a case where the defendant is acquitted by jury, or found guilty by jury, and unable to pay the costs accrued in said trial, should be charged and payable from class five expenditures, Section 50.710, supra.

This conclusion, we believe, is further supported by the fact that criminal costs expenditures such as here considered, by process of elimination, naturally fall within the category of expenditures classified as class five in Section 50.680 and 50.710, supra. Classes one, two, three and four expenditures authorized by Section 50.710, supra, pertain to specific expenditures. The courts of this state have ruled in the cases of Adair County vs. Weber, et al., 250 S.W.2d 492, and State ex rel. Strong vs. Cribb, 273 S.W.2d 246, that the classes of expenditures provided by Sections 50.680 and 50.710, supra, must be strictly complied with by county courts and county treasurers. These cases hold that county courts are not permitted to exercise their discretion in these budgetary mat-

Honorable James L. Paul

ters, but on the contrary, said cases hold that they must strictly follow the provisions of Sections 50.680 and 50.710 and pay claims on any from the authorized classes of expenditures. With these cases in mind, it is apparent, therefore, that the criminal costs incurred by a magistrate court in cases where the defendant is tried by jury and acquitted, or tried by jury and convicted, and unable to pay said court costs, would naturally fall and should be charged to class five expenditures, Sections 50.680 and 50.710, supra.

We note from the way your opinion request is worded that the county court may not have provided in this case for payment of magistrate criminal costs from class five expenditures in preparing this current county budget. If such be the case, the criminal costs of magistrate court still must be paid and said liability cannot be avoided on the ground there are no funds available in class five expenditures to pay said costs.

The court in Vaughan et al. vs. Appleby et al., supra, had this very same situation to contend with and ruled as follows:

"We do not think section 7663 can be given such a construction. We must assume that the legislature intended that all just and proper liabilities of the county, created in one year, should be paid out of the revenues and income of that year. The provisions for dividing and apportioning the revenues to be collected for the year into the various funds does not contemplate that a just demand against the county should go unpaid because the revenue appropriated to the particular fund, out of which it is primarily payable, may have been exhausted, if there be money in the treasury unappropriated, or not needed for the purposes for which it was appropriated, from which it can be paid. When it is found that there is a surplus in one fund, and a deficiency in another, there is nothing in the law, or other reason, why the court may not transfer the surplus in order to make up the deficiency. Indeed sections 3189 and 3190 expressly provide for such transfer."

The attorney general reached a similar conclusion under the present budget law in an opinion, copy of which is enclosed, dated August 16, 1943, addressed to Honorable W. C. Huffman. Therefore,

Honorable James L. Paul

magistrate court criminal costs for which the county is liable are to be paid regardless of whether or not the county has provided funds in class five expenditures for payment of said costs. Any surplus in class six expenditures may also be employed for such purpose in those cases where the county court has failed to budget or provide for said costs in class five expenditures or when funds budgeted in class five are insufficient for such purpose. In addition, as stated in the Vaughan case, supra, funds unused in other classes of expenditures may be transferred to class five expenditures and used for such purpose.

CONCLUSION

It is the opinion of this office that magistrate court costs in criminal cases for which the county is liable should be paid from class five expenditures under Sections 50.680 and 50.710, RSMo 1949. Such costs must be paid whether or not the county court has provided for the payment of such from class five expenditures in their current county budget and, in event of such failure, said costs may be paid from any surplus available in class six or unused funds of other classes may be transferred to class five in order to pay said costs.

The foregoing opinion, which I hereby approve, was prepared by my assistant, J. Burleigh Arnold.

Yours very truly,

John M. Dalton
Attorney General

JBA:mjb/om

Enclosure