

JURY:
JURY FEES:
COUNTIES:

In civil cases wherein a change of venue has been granted the county to which the venue has been changed is liable for duly authorized jury fees over and above the amounts which are taxed as costs and collected from the unsuccessful party.

October 10, 1960



Honorable James T. Riley
Prosecuting Attorney
Cole County
Jefferson City, Missouri

Dear Sir:

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

"Section 494.160 provides that the cost of a jury shall be taxed against the unsuccessful party and collected as costs the sum of twelve dollars. The balance of the jury costs is paid by the county.

"In cases of change of venue from another county in a criminal case, the statutes provide that the court costs be paid by the county in which the indictment was originally filed.

"Will you please advise if in a civil case the county in which the suit was originally instituted is liable for the jury fees over and above that which is collected from the unsuccessful party."

Section 494.100, RSMo, C.S. 1957, provides that each petit juror on the regular panel shall receive a specified amount for each day's service and mileage, "to be paid out of the county treasury."

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Section 494.110, RSMo, C.S. 1957, provides that petit jurors not on the regular panel shall receive for their services the amount specified in Section 494.100, which shall be paid as provided in said section. This section formerly provided that such payment was to be made as provided in Section 494.140.

Section 494.130, RSMo 1949, provides that the "clerk of the court" shall keep a book in which he shall enter, upon application of each juror, his time of service, mileage, etc.

Section 494.140, RSMo 1949, provides that the clerk shall issue to the juror a scrip showing the amount which such juror is entitled to receive out of the county treasury.

Section 494.150, RSMo 1949, provides that the treasurer of the county, upon presentation of such scrip, is required to pay the same out of any money in the treasury appropriated for county expenses, and such scrip shall be received by the sheriff, collector and other proper officers in payment of any debt due the county.

Section 494.160, RSMo 1949, does, as you have noted, provide that in a jury trial of any case, other than criminal, there shall be taxed against the unsuccessful party and collected as costs the sum of twelve dollars as jury fees.

Considering the above statutory provisions, the court, in the case of *Scott v. Young*, 113 Mo. App. 46, held that the county pays the jury expenses in the circuit court. The court further stated, l.c. 51, that the fees which are taxed as costs and collected from the unsuccessful party, as provided by Section 494.160, "are to be paid into the county treasury by way of reimbursing the treasury for moneys paid out by it theretofore in payment of the jury service in that particular case."

We believe that it is clear from a reading of the above sections that the jury fees are to be paid from the county treasury of the county in which the trial is held. Nothing in these sections imposes the obligation for such fees and expenses upon the county in which the suit was originally instituted.

Further, we have fully examined the statutory provisions relating to change of venue in civil cases and do not find any statutory provision which would impose the obligation for the payment of jury fees upon the county wherein the suit was originally instituted. It is, of course, fundamental that the

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county is not obligated for fees and expenses of this nature unless so chargeable by statute. Henry County v. St. Clair County 81 Mo. 72. The entire subject of costs is a matter of statutory enactment. State v. Ball, 158 SW2d 182.

In passing, we note with interest the case of Berry v. St. Francois County, 9 Mo. 361, wherein the court stated:

" * * * When a cause is removed from one county to another, by a change of venue, it is as much a cause of the county to which it is removed (so far as the present question is involved), as if the indictment had been found in it; and there is as much justice and propriety in making the latter county pay the expense of a guard as if the offense had been committed within its limits. The county to which a cause is removed today, may in its turn tomorrow send a cause to the county from which one has been received. * * *"

Sections 550.120 and 550.130 do specifically provide that in any criminal cause in which a change of venue is taken the costs are to be paid by the county in which the indictment was originally found or the proceedings instituted. Such statutes are, we believe, a legislative recognition that, in the absence of such an enactment, the costs for which a county is liable would be borne by the county to which the change of venue was taken, and fully support the conclusion above reached, that in civil cases, in the absence of such a legislative enactment, jury fees are to be paid out of the county treasury of the county in which the trial is had.

CONCLUSION

Therefore, it is the opinion of this office that in civil cases wherein a change of venue has been granted, the county to which the venue has been changed is liable for duly authorized jury fees over and above the amounts which are taxed as costs and collected from the unsuccessful party.

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

Yours very truly,

John M. Dalton
Attorney General

DDG:vlw