

Opinion Request No. 137
answered by letter.

July 17, 1961



Honorable Roy G. Cooper
Prosecuting Attorney
Madison County
Fredericktown, Missouri

Dear Mr. Cooper:

It is our belief that your first two questions are answered by an official opinion of this office rendered under date of December 16, 1955, to Rex Henson. (We are attaching a copy of said opinion for your consideration.) This opinion holds that in probate and insanity hearings the costs of the proceedings (an attorney fee is one of such costs) are to be paid by the county, if the estate of the subject is insufficient, etc.

We believe that the question of the prosecuting attorney representing the alleged insane person is answered by an official opinion rendered under date of January 7, 1952, to Roy W. McGhee, Jr., a copy of which we are attaching.

Insofar as the representation of the alleged insane person by a law partner of a prosecuting attorney, we believe that the applicable principle of law is set out in an official opinion rendered under date of May 11, 1951, to O. C. Tee, which holds that a prosecuting attorney should not appear as defense counsel for a person charged with a crime outside his county because it would be contrary to public policy. Under the same reasoning, we believe that it would be against public policy for a partner of the prosecuting attorney to represent the alleged insane person, since the prosecutor should be representing the state and county at the hearing.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

CB:gm
Enclosures