

JURORS:
JURIES:
CRIMINAL COSTS:
JURY FEES:
TAXATION OF JURORS' FEES:

The State is not liable for any jury fees except such as are taxable as costs pursuant to express statutory authorization. Jurors on the regular panel receive \$6 per day and mileage; jurors not on the regular panel who serve in a case also receive \$6 per day and mileage; and jurors who are summoned in cases described in Sec. 494.120, but do not serve in the trial also receive \$6 per day, and also receive mileage if they have traveled at least one mile. No part of such compensation may be taxed as costs. Jurors not on the regular panel who are summoned in all cases other than those described in Sec. 494.120, but do not serve in the trial receive \$3 per day, and the fees allowed to such jurors are to be taxed as costs in the cases in which they were summoned.

January 4, 1963

Opinion No. 137 *Rev. 5 (1963)*

Honorable Norman H. Anderson
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Dear Mr. Anderson:

You have requested the opinion of this office concerning the liability of the state under Section 550.020 RSMo 1959, with respect to the compensation paid to jurors who serve in criminal cases. Your letter informs us that heretofore St. Louis County has not taxed jury costs in fee bills which are paid by the state and you suggest that under Section 550.280, RSMo 1959, all such jury costs in criminal cases should be taxed as part of the costs in each case.

Section 550.010 RSMo 1959 provides in part that when any person shall be convicted of any crime or misdemeanor, he shall be adjudged to pay "the costs." Section 550.020, referred to in your letter, to the extent here relevant, requires the state to pay "the costs," if the defendant is unable to pay them, in all capital cases and in cases in which the defendant is sentenced to imprisonment in the penitentiary.

Section 550.040 RSMo 1959 provides in part that in all capital cases and those in which imprisonment in the penitentiary is the sole punishment for the offense, if the defendant is acquitted "the costs" shall be paid by the state. In other cases the costs are to be paid by the county. These statutes in substantially the same form have been in effect for over a century.

Essentially, the problem involved is whether the clerk of the circuit court of St. Louis county is authorized to

*Named copies
see exhibit*

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tax, either in whole or in part, as part of "the costs" in a criminal case the compensation which is paid or payable to jurors who serve or who are called for service in connection with such case. This for the reason that the state could not be liable under any circumstances unless and to the extent such jury fees are properly taxable as costs. It is to be noted also that in those cases in which the defendant is convicted, neither the state nor the county is liable for the costs unless the defendant is unable to pay them. Hence, the answer to the question presented by your request directly affects the liability of a convicted defendant as well as that of the state or county. That is to say, if the state is liable for such jury fees, either in the event of a conviction or in the event of an acquittal, then under the same circumstances and situation the defendant himself, if convicted, would be primarily liable for the payment of such jury fees. We point this out because the controversy is not simply between the county and the state but involves the rights and liabilities of convicted defendants as well.

In City of Carterville v. Cardwell, 152 Mo.App. 32, 132 SW 745, 746, it was said (citing City of St. Louis v. Meintz, 107 Mo. 1. c. 615, 18 SW 30):

"The word 'costs' when used in relation to the expenses of legal proceedings means the sum prescribed by law as charges for the services enumerated in the fee bill."

The Court further held in that case:

"Costs in criminal proceedings are those charges fixed by law which have been necessarily incurred in the prosecution of one charged with a public offense as compensation to the officers for their services."

The rule is that "all statutes in reference to costs must be strictly construed. Shed v. Railroad, 67 Mo. 687." In re Murphy, 22 Mo.App. 476, 478. In Cramer v. Smith, 350 Mo. 736, 168 SW2d 1039, 1040, the Supreme Court en banc quoted from 20 C.J.S. Costs §435, p. 677, as follows:

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"'At common law costs as such in a criminal case were unknown. As a consequence it is the rule in criminal as in civil cases that the recovery and allowance of costs rests entirely on statutory provisions--that no right to or liability for costs exists in the absence of statutory authorization. Such statutes are penal in their nature, and are to be strictly construed.'"

Our Supreme Court has ruled on several occasions that "no costs can be taxed except such as the law in terms allows." State ex rel. Clarke v. Wilder, 197 Mo. 27, 32, 94 SW 499.

We take note of the fact that every person charged with a criminal offense has a constitutional right to a trial by jury. On the face of matters, it seems strange that a person convicted of a misdemeanor should be further punished simply for demanding that to which he is entitled as of right--a trial by jury. Moreover, an accused charged with a felony is given no choice at all. Unless he pleads guilty, he is not only entitled to, but rather, is forced to accept a trial by jury whether he wishes one or not unless the court agrees to a waiver of a jury trial. Section 546.040 RSMo 1959.

It is true that many years ago our Supreme Court held that the General Assembly had the constitutional power to require a jury fee to be taxed as part of the cost against a convicted defendant. State v. Wright, 13 Mo. 243. We express no opinion as to whether the holding in that case is still the law. By coincidence, the statute which was sustained in the Wright case applied solely to St. Louis County. The statutory language in the Act of January 29, 1847, Sec. 3 (Laws 1847, p. 69) requiring the taxation of a jury fee was explicit and unambiguous:

"Also when any judgment shall be rendered in the St. Louis criminal court against any defendant, there shall be taxed with the costs of said judgment, and collected from the defendant as other costs, the sum of three dollars as a jury fee."
(Emphasis supplied.)

In view of the foregoing considerations, the rule of strict construction, applicable to criminal costs generally,

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should be religiously followed in determining the liability of a convicted defendant for jury costs. If such a defendant is not liable, then it would follow that the state would not be liable for such costs. We therefore rule your question upon the basic premise that criminal jury costs and fees cannot be held taxable in the absence of an express, clear and unambiguous statutory directive.

Section 550.280 RSMo 1959, to which you refer, reads as follows:

"All fees due witnesses before the grand jury, and all fees due jurors in any criminal case, and all fees accruing in any inquest case where the verdict of the jury is that the deceased came to death by other than unavoidable accident or natural causes, shall be deemed criminal costs, and shall be paid in like manner and shall be subject to all the offsets herein provided for."
(Emphasis supplied.)

The decisive questions are (1) whether prior to the enactment of Section 550.280 fees due jurors who served or were summoned in connection with a criminal case were taxable as part of the costs and (2) whether said section makes any change as to the taxation of such costs.

We first consider the state of the law respecting jury fees at and prior to the time of the enactment of Section 550.280 (Laws 1899, p. 219) and the changes therein as reflected in the Revised Statutes of 1959.

Section 3778 RSMo 1899 provided as follows:

"Each grand and petit juror on the regular panel shall receive two dollars per day for every day he may actually serve as such, and five cents for every mile he may necessarily travel going from his place of residence to the court-house and returning to the same, to be paid out of the county treasury." (Emphasis supplied.)

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Except for the amount of the remuneration paid to jurors on the regular panel, which is now six dollars per day and seven cents per mile, the language of the 1899 statute is identical to that of Section 494.100 RSMo 1959.

Section 3787 RSMo 1899 provided as follows:

"All petit jurors not included in the regular panel shall receive for their services as such jurors one dollar per day, which shall be taxed as costs in the case, but such jurors serving in more than one case in the same day, at the same place, shall only be allowed fees for one day, and in all cases where such juror shall be detained more than one day in the same case, he shall be allowed the sum of one dollar for each additional day he may be detained."
(Emphasis supplied.)

This section has been changed (aside from the increase in the amount of fees payable) by eliminating that portion relating to taxing such fees as costs. (Laws 1919, p. 433) In its present form, it is Section 494.110 and reads as follows:

"All petit jurors not included in the regular panel shall receive for their services as jurors the amount provided in section 494.100 which shall be paid as provided in that section, but jurors serving in more than one case in the same day at the same place, shall be allowed fees for one day only, and in all cases where the juror shall be detained more than one day, in the same case he shall be allowed the same sum for each additional day he may be detained." (Emphasis supplied.)

Section 3784, RSMo 1899, reads as follows:

"Each juror not on the regular panel and summoned to sit as a juror in any criminal cause wherein the offense charged is punishable with death, or

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by imprisonment in the penitentiary for life, or for not less than a specified number of years and no limit to the time, shall be allowed the sum of one dollar per day for each day that he may be in attendance on said court, and five cents per mile for each mile traveled in going to and returning from said court, whether he sits in the trial of the cause or is challenged off."

In its present form the foregoing section is now Section 494.120. It provides for a fee of six dollars per day (and mileage in some instances) for "each juror not on the regular panel and summoned to sit as a juror" in certain designated criminal cases. The 1899 version of Section 494.120 was construed in 1906 in State ex rel Suter v. Wilder, 196 Mo. 418, 434, 95 SW 396, to mean that only those jurors not on the regular panel who qualified upon panel of forty from which the trial panel of twelve was selected were entitled to have their fees taxed as costs. We note that in the following year, evidently as a result of the Suter decision, the statute was amended to include those who had not been selected on the panel, provided they traveled at least one mile. (Laws 1907, p. 321)

The only other section which related to fees of jurors was Section 3258 RSMo 1899, which provided in part as follows:

"Jurors shall be allowed fees for their services as follows: * * *

"For each juror attending a trial before any court of record, per day, except as otherwise provided by law. . . . 1.00

"For each mile traveled in going to and returning from the place of trial in attending any trial before any court of record, per mile05

"All fees allowed jurors as above shall be taxed as costs in the cases respectively in which they may serve; but jurors serving in more than one case on the same day, at

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the same place, shall only be allowed fees in one case; and any juror who shall claim fees for attending in two or more cases on the same day at the same place shall not be allowed fees for that day." (Emphasis supplied.)

In its present form, the statute is Section 494.170 RSMo 1959. That section reads in part as follows:

"1. Except as otherwise provided by law jurors shall be allowed fees for their services as follows: * * *

For each person summoned, attending and reporting to any court of record, per day. 3.00

For each mile traveled in going to and returning from the place of the trial in attending any trial before a court of record, per mile.07

"2. All fees allowed jurors as above shall be taxed as costs in the cases, respectively, in which they were summoned; but jurors serving in more than one case on the same day, at the same place, shall be allowed fees only in one case; and any juror, who claims fees for attending in two or more cases on the same day, at the same place, shall not be allowed fees for that day." (Emphasis supplied.)

This section by its terms applies only where no other provision for compensation is made. In our opinion, it applies to all jurors not on the regular panel who are summoned in a specific case and attend court, but who do not serve on the trial panel, except those jurors who come within the provisions of Section 494.120.

The statutes above quoted make a clear distinction between jurors on the regular panel and those who are not so included. This distinction formerly had an important bearing upon the amount payable to the juror, although in recent years the

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Legislature has granted the same compensation to all jurors except those who come within the scope of Section 494.170. Thus, in 1899, jurors on the regular panel received two dollars a day payable out of the county treasury, while those not included on the regular panel were allowed only one dollar a day, if they served in the trial under Section 3787 or were on the qualified panel under Section 3784. All fees allowed to those not on the regular panel were specifically directed to be taxed as costs. Our present statutes since 1919 have eliminated the provision specifically requiring the taxation of jury fees of those not on the regular panel as part of the costs, except only as to those jurors who come within the scope of Section 494.170 RSMo 1959.

A brief reference to some of the earlier statutes relating to the selection and payment of jurors is of help in understanding the state of the law in 1899. Chapter 88 of RSMo 1855 contained two articles relating to jurors. Article I contained general provisions, and in effect provided for summoning jurors to serve when needed in particular cases. Section 29 of that Article provided that the fees allowed to jurors "serving in a trial of any civil or criminal case" shall be taxed and collected as other costs in the case. Article II authorized standing jurors (regular panel), who were to receive scrip payable out of the county treasury, nothing being said as to taxing the cost of such standing jurors.

Chapter 146 of General Statutes of Missouri 1865, also provided for summoning jurors to serve whenever they were required for the trial of a particular case. Each juror serving in a trial (civil or criminal) was entitled to a specified fee (\$1.00 per diem) which was to be "taxed and collected as other costs in the case" (with the usual proviso that a juror who claims fees for serving in two or more cases on the same day shall not be allowed fees for that day).

Section 29 of said Chapter 146 provided that courts of record exercising criminal jurisdiction had the right to order the sheriff to summon twenty-four men as the "standing jurors" of the term. Section 30 provided that no standing juror "shall depart the court without leave." Section 33 provided that such standing jurors were entitled to the same pay as grand jurors (\$1.50 per diem and mileage), and on request were entitled to scrip payable out of the county treasury.

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The foregoing statutes clearly differentiate between "standing jurors" who were paid a specified sum out of the county treasury and those jurors who were summoned for the trial of a particular case and for which service were entitled to a fee which should be taxed and collected as other costs in the case.

In the Revised Statutes of 1879, provision was made for regular panels consisting of twenty-four standing jurors for each term of court. By this time, our present statutes relating to jury compensation began to take shape. It was provided that each petit juror on the regular panel shall receive one dollar and fifty cents per day plus mileage and be entitled to scrip payable out of the county treasury. Sections 2790, 2792, 2794 RSMo 1879.

So, too, in Section 2798 RSMo 1879, it was provided that all petit jurors not included in the regular panel "shall receive for their services as such juror one dollar per day which shall be taxed as costs in the case." Other provisions related to obtaining jurors when the regular panel was unavailable or exhausted. However, by this time it was mandatory that there be a regular panel of jurors summoned for service at each term of court. It was in the revision of 1879 that present Section 494.160 first appeared as Section 2799. It provided:

"Whenever any jury provided for in this chapter shall serve in the 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, which, when collected shall be paid to the county treasury to the credit of the county revenue fund."
(Emphasis supplied.)

It is therefore apparent that as of the time the 1899 act was enacted, jurors who made up the regular panel were paid only out of the county treasury. Moreover, from the very first of the statutes relating to standing jurors, the concept was always that they should be paid out of the county treasury. On the other hand, in the earlier stages of our statutory history, jurors who were summoned for service in a particular case or who were not on the regular panel received a lesser amount as fees, and such fees were always to be taxed as costs in the cases in which they

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served. From the very inception of standing or regular jurors, there never was any provision for taxing their fees as costs in any case in which they may have served.

It would appear therefore that the compensation paid to the regular jurors was considered as part of the general expense of operating the court system, similar to other expenses such as the cost of providing and maintaining the courthouse and providing judges to sit at the trials, no part of which expenses is paid by the litigants. The compensation paid to regular jurors was payable for each day they attended court pursuant to their summons as regular jurors, irrespective of whether they actually served in a case or whether they served in more than a single case in any one day. Moreover, it was wholly coincidental whether such regular jurors served in a civil or criminal case. Their right to compensation depended solely upon their attendance in court pursuant to summons. The service of the regular juror was not necessarily identifiable with a particular case, and never was intended to be so. On the other hand, jurors who were not on the regular panel were summoned for service only when such service was necessary in a particular case. For such reason, the fees payable to such jurors (not on the regular panel) necessarily constituted compensation for service in the case for which they were summoned, and their fees were by force of statute taxable as part of the costs in that particular case.

Summarizing, as of 1899, no fees payable to jurors were taxable as costs except only those fees payable to jurors who were not on the regular panel. It is of significance that Section 2799, RSMo 1899, provided for taxing against the unsuccessful party a jury fee of twelve dollars in cases "other than criminal." This statute was no doubt enacted for the purpose of partially reimbursing the county for the expense of regular jurors in civil cases. However, the twelve-dollar jury fee was not intended as a substitute for jury fees theretofore taxable as costs, but was additional thereto. In civil cases, only the twelve-dollar fee was taxable when regular jurors served in the trial of the case, while in criminal cases no jury fees at all were taxable with respect to regular or standing jurors. In the latter cases, only those fees of jurors who were not on the regular panel were taxable as costs. Had it been intended to provide that the fees paid to regular jurors should be taxable as costs, it is obvious that language expressive of such purpose would have been available, just as in the case of jurors who were not included in the regular panel.

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With the foregoing in mind, we consider Section 550.280 for the purpose of determining what was intended thereby and what changes were effected by that section. Our study has led to the conclusion that Section 550.280 was not intended to authorize the taxation of jury fees as part of the costs in any situation in which such fees were not theretofore required to be taxed as costs.

Section 550.280, above quoted, was Section 3 of an act entitled "An Act in relation to the payment of criminal costs and for other purposes relating thereto, with emergency clause." Except for slight revisions, not here material, Sections 550.260 to 550.300 RSMo 1959, both inclusive, constitute the Act of 1899.

In construing Section 550.280, the entire act must be read as a whole, considered in the light of the theretofore existing state of law relating to jury fees and compensation. See St. Louis Southwestern Railway Co. v. Loeb, Mo.Sup., 318 SW2d 246, 252, in which the Court held:

"Generally, we must seek to gather the intent of the legislature from the ordinary meaning of the words used, considering the whole Act and its legislative history, and if necessary, considering also the circumstances and the usages of the time; and we must seek to promote the purpose and objects of the statute, and to avoid any strained or absurd meaning."

So read, the evident purpose of the Act of 1899 was to make all fees payable taxable as costs in criminal cases subject to the prior lien of the state and county for certain indebtedness. In effect, the Act provides for the coercive payment (by persons claiming fees in criminal cases) of delinquent personal taxes, fines, penalties, forfeitures, or forfeited recognizances, costs in criminal cases and for contempt of court and of indebtedness on account of funds coming into the hands of claimants by reason of any public office.

Section 550.270 RSMo 1959 specifically provides that before any fees in criminal cases may be paid "to the proper owners as the same may be called for" the party to whom the same is due "shall furnish satisfactory evidence to the treasurer" that he or she is not indebted to the state or county in the respects above set forth. The amount of any such indebtedness is required

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to be deducted from the fees payable to the claimant, and if such indebtedness exceeds the amount of the fees, then the claimant is given credit for the amount thereof. Even taking the "oath of insolvency" does not defeat the right of set-off.

Section 550.290 RSMo 1959 emphasizes the statutory intent by providing that all fees coming within the scope of the statute "shall not be negotiable or assignable except subject to all the set-offs herein provided for, and that the state and county holds a prior lien on the same for the purpose of indemnification against loss by reason of the nonpayment of personal back taxes, and for the payment of the fines, penalties, forfeitures, and costs herein mentioned."

Bearing in mind the statutory purpose relating to offsets, it simply makes no sense to attribute to the Legislature from the language of the section, an intent to make a distinction between the members of the same regular panel by making a portion of the scrip received by some of the panel subject to offsets to the extent they chanced to serve in criminal cases, while the remainder was not. And what of those who served in both a civil and criminal case the same day? Would all or part of the indivisible per diem of such jurors be subject to offsets? The juror receives "a scrip" showing the amount which he is entitled to receive out of the county treasury. Section 494.140 RSMo 1959. There is no provision for issuing a series of scrips, some listing the criminal cases and the days served therein, some listing the civil cases and time spent, and others listing the days on which the juror served in no case at all.

With specific reference to Section 550.280, it is to be noted that it sets forth three different categories of fees which "shall be deemed criminal costs" (for the purpose of the Act of 1899) and which are to be paid in like manner and subject to all the offsets provided for in the Act. In addition to "all fees due jurors in any criminal case" (the language which is here for construction), the section covers (1) "all fees due witnesses before the grand jury," and (2) "all fees accruing in any inquest case where the verdict of the jury is that the deceased came to death other than unavoidable accident or natural causes."

It would appear obvious that if all compensation payable to jurors who serve in connection with any criminal case is taxable as costs, then all of the other fees mentioned in the section would also be taxable as costs. Yet we have found no provision in our statutes for taxing, as part of the costs in a criminal

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case, fees which are due witnesses before the grand jury. Many of such witnesses testify on matters which cannot be identified with any specific case. In addition, many of such witnesses testify in connection with investigations in which no true bills are returned. Yet here too, as in the case of jurors, the all-inclusive word "all" is used.

So, also, as to fees accruing in inquest cases, we are aware of no provision in our statutes for taxing such fees as part of the costs in any criminal case. Yet the statute provides that "all" such fees shall be "deemed" criminal costs, but only where the verdict of the jury is that the deceased came to death by other than unavoidable accident or natural causes. This is true whether or not the verdict names a person responsible for the death. It is true even when a person is named, irrespective of whether the deceased came to his death by criminal means or by justifiable homicide. When Section 550.280 is read as part of the whole Act of 1899, we can find no intent to make any of the fees therein specified taxable as part of the costs in a criminal case in situations where such fees were not theretofore taxable as costs. That section pertains only to the payment, not the taxation, of the fees referred to therein.

The case of Scott v. Young, 113 Mo.App. 46, 87 SW 544, provides a clue as to the purpose and meaning of Section 550.280, even though that was a civil case decided in 1905. The statutes construed in that case were the statutes above quoted from the Revised Statutes of 1899. The Court there held with respect to jurors on the regular panel:

"It is clear under this section that the county, and not the litigant, pays the expense of the regular panel." (Emphasis supplied.)

The Court then considered the statutes relating to jurors not on the regular panel and took note of the fact that even they were entitled to receive scrip out of the county treasury. Said the Court (87 SW, 1. c. 546):

"It is apparent from these sections that the county pays the jury in the circuit court. This is true as to the regular panel and jurors summoned which are not of the regular panel, each likewise receive scrip from the clerk, and are paid

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by the county out of the county funds. While fees for their services may be taxed, according to the statute, against the unsuccessful party to the suit, these fees, when so taxed and collected, are 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." (Emphasis supplied.)

Inasmuch as jurors not on the regular panel had the right to receive scrip payable out of the county treasury without regard to the ultimate outcome of the case in which they served or the time the costs in such case were finally taxed, the Act of 1899 would have failed in its purpose in part if such jurors could escape payment of their indebtedness by requesting scrip immediately payable rather than waiting for the payment of their fees when taxed in the case. Hence, the purpose of Section 550.280, in so far as it affects jurors serving in a criminal case, was to make certain that fees due jurors not on the regular panel would be subject to the offsets provided for by the Act even if such jurors received scrip in payment for their services. When the statute is so construed, a consistent pattern in this section becomes obvious. Witnesses before the grand jury were also issued scrip which was payable out of the county treasury. (Section 3260 RSMo 1899.) Our present statutes contain a similar provision (Section 491.290 RSMo 1959). With respect to fees due in inquest cases, Section 6653 RSMo 1899 (now Section 58.570 RSMo 1959), provided for a certification by the coroner to the county court of the various fees accruing in such cases, with the requirement that the county treasurer pay to each such person on demand the fees to which he is entitled. Other sections of the statutes relating to coroners and inquests which need not here be reviewed fortify the conclusion that what was intended was that fees in those cases described in Section 550.280 should not be paid by the county treasurer until the claimant furnished the necessary evidence.

Note that the section provides that such fees "shall be paid in like manner and shall be subject to all the offsets herein provided." This can mean only that the fees described in said section shall be paid by the county treasurer in the same manner as other fees listed in the fee bill which are subject to the statute are paid. That is to say, in all such instances, as a condition precedent to payment, satisfactory

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evidence must first be furnished the county treasurer respecting the absence of indebtedness.

Section 550.280, strictly construed, contains no provision whatever respecting the taxation of criminal costs or the creation of additional taxable costs. As the title of the Act makes clear, it relates to the payment of costs. Nothing in the title indicates that the Legislature intended to create additional items of criminal costs not theretofore part of the costs of a case. The title of an act is a part thereof and must be taken into consideration in ascertaining the legislative intent. A. J. Meyer & Co. v. Unemployment Compensation Commission, 348 Mo. 147, 152 SW2d 184. It "is itself a legislative expression of the general scope of the bill." Hurley v. Eidson, Mo.Sup., 258 SW2d 607, 610. The very fact that the section provides that the fees therein specified shall be "deemed" criminal costs, rather than "taxed as part of the costs," impels the conclusion that what is meant is simply that for the purpose of the offsets described in the Act, such items shall be treated and paid by the county treasurer in the same manner as criminal fees, rather than as civil fees are treated and paid.

We further note the fact that the section relates to fees of jurors in any criminal case. Jurors on the regular panel do not receive any fees for service in any particular case, as we have noted above. Hence under any view of the section, jurors on the regular panel who are paid for service as jurors generally without regard to the character of any particular case in which they might serve, or whether they serve in any case at all receive no fees for service "in any criminal case." As for jurors not on the regular panel, under the state of the law in 1899 such fees were already taxable as costs, so that the section applied to such jurors only to the extent that they were entitled to and received scrip in payment for their services in lieu of the fees which might thereafter be taxed in the case.

Finally, in construing the Act of 1899 and deriving a purpose therefrom, we take note of the emergency clause contained in Section 8 of the Act:

"There being now a large amount of delinquent personal taxes due the state and counties, and many fines and forfeitures unpaid, and the further fact that there is a deficiency in the state revenues, and a large amount of criminal costs unpaid, creates an emergency

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within the meaning of the constitution;
therefore this act shall be in force from
and after its passage."

The very fact that there was a deficiency in the state revenues would make it obvious that the Legislature could not have intended to add to said deficiency by making the state liable for additional costs. So, too, the fact that a large amount of criminal costs were unpaid would not be an inducement to enlarge such amount by creating additional costs. The emergency clause makes evident the legislative purpose of protecting the state revenues and decreasing the amount of criminal costs which might remain unpaid by providing that all fees described in the statute for which the state was already liable should be subject to the offsets therein provided for.

As further evidencing the legislative intent to decrease the deficiency in the state revenues, we note the provision (now Section 550.300) that all uncalled for fees paid by the state shall be paid into the state treasury. Prior to this Act, the Supreme Court had ruled (in 1886) that such uncalled for fees, although paid by the state, must be paid into the county treasury. See City of St. Louis v. Clabby, 88 Mo. 573. We further note that the same General Assembly enacted another statute (now Section 550.160 RSMo 1959) which prohibited the allowance of fees to public officers testifying before a coroner's inquest, grand jury and in criminal cases except in certain instances (Laws 1899, p. 221) with the following emergency clause:

"The immediate necessity for a reduction
of criminal costs in this state creates an
emergency within the meaning of the consti-
tution."

Under ordinary circumstances, all jurors who serve in St. Louis County are members of the regular panel. Chapter 496 of the Revised Statutes of 1959 provides for a general panel of jurors for all divisions of the court (Section 496.060). Whenever any division of the court requires a panel for the trial of a case, a sufficient number of jurors from the full panel is required to be sent to such division (Section 496.070). The only specific reference in Chapter 496 to jurors not on the regular panel is contained in Section 496.080, which provides that when a jury for the trial of a case cannot be made up "from the regular panel," then the judge, by agreement of all the

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parties, may make out and deliver to the proper officers a list of jurors sufficient to complete the panel, but who "shall be summoned only for the trial of that particular cause."

Inasmuch as Chapter 496 contains no provision for payment of jurors, it follows that jurors who constitute the general or regular panel receive compensation for their services under the general provisions of the law (Ch. 494, RSMo 1959). The jurors who are on the general panel remain in the jury room in charge of the sheriff except when engaged in the trial of a case or thereafter excused by a judge. Section 496.060. As above noted, such jurors are not paid for service in a particular case, civil or criminal, and in fact may not serve in any case. They are paid for their services for attending and remaining in court pursuant to summons. As part of their services as jurors they may serve in a criminal case, but no fee is due such jurors specifically for services in such case.

It is conceivable, although unlikely, that by reason of challenges for cause in a particular case the general or regular panel in St. Louis County may be exhausted, in which case it would be necessary to call extra jurors for service in that case. In such situation, the provisions of Chapter 494 relating to compensation of jurors not on the regular panel would also be applicable. Prior to 1919, the fees of extra jurors, not part of the regular panel, who served on the trial panel under what is now Section 494.110, or who were summoned in the cases described in what is now Section 494.120, were taxable as costs. However, by reason of the 1919 amendment to Section 494.110, above noted (Laws 1919, p. 433), such fees, now six dollars per day (although paid for services in the particular case in which they serve or were summoned), are no longer taxable as costs. Since 1911 (Laws 1911, p. 383) all other extra jurors who are summoned for a particular case but do not serve in the trial are entitled to fees, which are still taxable as costs in the cases in which they were summoned. Presently, their compensation is three dollars per day (Section 494.170). It would appear that piecemeal amendments to the statutes were responsible for the present situation.

It follows from the foregoing that the clerk of the circuit court of St. Louis County is not authorized to tax as part of the costs in a criminal case the compensation payable under Sections 494.100, 494.110 and 494.120 to the jurors who serve

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or who are summoned in connection with such case. However, the fees of all other jurors, not members of the regular panel, who are summoned for a particular case, but do not serve therein, and whose compensation is not provided for otherwise than by Section 494.170, are to be taxed as costs.

CONCLUSION.

It is the opinion of this office:

- 1) The state is not liable for any jury fees in criminal cases except only such jury fees as are taxable as costs pursuant to express statutory authorization in those cases in which the state is liable for costs.
- 2) Members of the regular panel of jurors receive six dollars per day for each day of service, and mileage, payable out of the county treasury. No part of such compensation may be taxed as part of the costs.
- 3) Jurors not on the regular panel who serve in a particular case receive six dollars per day for each day of service as jurors, and mileage, also payable out of the county treasury. No part of such compensation may be taxed as part of the costs.
- 4) Jurors who are summoned in any of the cases described in Section 494.120, but who do not serve in the trial of such cases, receive six dollars per day for each day they are in attendance on the court, and also receive mileage if they have traveled at least one mile in obedience to the summons, payable out of the county treasury. No part of such compensation may be taxed as costs.
- 5) Jurors, not members of the regular panel, who are summoned in all cases other than those described in Section 494.120 but do not serve in the trial of the cases, receive fees in the sum of three dollars per day for each day of attendance. The fees allowed to such jurors are to be taxed as part of the costs in the cases in which such jurors were summoned.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Joseph Nessenfeld.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

JN:sp