

Opinion No. 239 answered by  
letter (Nessenfeld)

No. 13 (1963)

January 4, 1963



Honorable John A. Honssinger  
Prosecuting Attorney  
Laclede County  
Lebanon, Missouri

Dear Mr. Honssinger:

You have requested the opinion of this office as follows:

"A felony charge of Grand Stealing was sent on a change of venue from Laclede County to Camden County, Missouri. The case was there tried before a jury. The Circuit Clerk of Camden County has filed, by the approval of myself and Judge Curtis, in accordance with Section 550.130, the costs bill in this case. The costs bill includes the costs of the jury panel. Is Laclede County required to pay, as a part of the costs, the expense of the jury panel from Camden County, Missouri? I have researched Section 550.120 and Section 550.130, but find nothing to satisfactorily answer my problem."

Section 550.120 RSMo 1959 provides in part that in any criminal cause in which a change of venue is taken from one county to any other 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." Section 550.130 RSMo 1959 provides for the certification of the "bill of costs" in such cases, and its presentation to the county court of the original county, and requires that such cost bills "shall be paid as if the cause had been tried or disposed of in said county."

The foregoing sections are to be read with Sections 550.030 and 550.040, which provide for the liability of the State and county, respectively, for payment of "the costs" where the defendant is convicted and unable to pay the costs, and in cases where the defendant is acquitted.

Your letter does not state whether the defendant was convicted or acquitted, and if convicted, the punishment assessed. If the defendant was convicted and sentenced to imprisonment in the penitentiary, LaCade County would not be liable for any costs in the case, because the liability for taxable costs in such cases would be that of the State under Section 550.030. In all other cases, LaCade County would be liable for all costs which are taxable as such pursuant to express statutory authority.

Costs of a jury, similarly to costs of providing and maintaining the courthouse and the expenses of the salaries of judges and other court officials, constitute part of the costs of the administration of the judicial system and may not be taxed as part of the costs of a specific case absent statutory authorization. It is well settled that the entire matter of costs is a matter of statutory enactment. See Cramer v. Smith, 350 Mo. 736, 168 SW2d 1039, 1040, and State ex rel Clarke v. Wilder, 197 Mo. 27, 32, 94 SW 499. In the latter case it was ruled that "no costs can be taxed except such as the law in terms allows." Therefore, the only question here is whether costs of the jury panel in Camden County may be taxed as part of the costs in the case in question pursuant to any statutory authority.

In an opinion dated January 4, 1963, to Hon. Norman H. Anderson, copy of which is herewith enclosed, this office ruled the question of the right to tax jury fees as part of the costs in criminal cases as follows:

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- 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 conclusions are applicable in determining the liability of LaCade County for any part of the jury costs if the defendant was not convicted and sentenced to imprisonment in the penitentiary. The conclusions in said opinion will answer the question presented in your request.

Very truly yours,

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THOMAS F. EAGLETON  
Attorney General

JN:sr

Enclosure