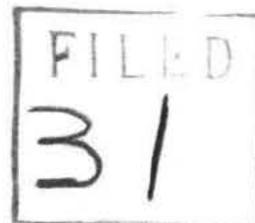


Opinion No. 406 (1964), and No. 31 (1965), answered by Joseph Nessenfeld, by letter.

(See Op 133-196P)

January 26, 1965



Honorable Paul D. Hess, Jr.
Prosecuting Attorney
Macon, Missouri 63552

Dear Mr. Hess:

This is in reply to your recent request to this office to review the Attorney General's opinion dated February 28, 1933, to Honorable Forrest Smith. This opinion holds that expenses incurred for medical services to a prisoner in a county jail constitute costs incurred on behalf of the defendant for which the state is not liable.

Your letter states that two indigent defendants, while in custody of the Macon County Sheriff, in the Macon County Jail, received medical attention under the provisions of Section 221.120, and that said defendants were ultimately sentenced to terms of imprisonment in the Missouri State Penitentiary. The Comptroller's Office has refused to approve for payment the medical expenses, basing said rejection on the foregoing opinion.

We have carefully studied the applicable statutes, together with the case of *Miller v. Douglas County*, 102 S.W. 996, referred to in your letter, and are of the opinion that the expenses involved are costs incurred on behalf of the defendants and may not be taxed against the state, or for that matter, against the county. As you know, Section 550.010 RSMo expressly provides that in the event of a conviction no costs incurred on the part of the defendant except costs for board may be paid by the state or county. Costs for medicine and medical attention are not costs of prosecution, but are incurred on the part of the defendant just as are costs for board. Board costs could not be paid but for the statutory exception. See also *Cramer v. Smith*, Mo. Sup., 168 S.W. 3d 1039, holding that the state is liable for costs of a transcript only because of the statutory language expressly requiring that such costs be taxed against the state or county. No such language appears in Section 221.120. It follows that the opinion of February 28, 1933, is correct and remains the opinion of this office.

Honorable Paul D. Hess, Jr.

With respect to the case of Miller v. Douglas County, we note that case involved a claim against the county by the person furnishing the medical services and medicines, and the Supreme Court held that the claim was properly denied. It is true that in the course of the opinion the Court referred to what is now Section 221.120, evidently because the plaintiff had cited that statute as justifying the allowance of his claim. The Court did not consider the question of whether the costs were or were not costs incurred on behalf of the defendant and that question was in no wise involved in the decision. What is said in reference thereto is at most dictum, but even the dictum does not purport to rule the specific question here presented.

For your information, we enclose herewith copy of the opinion of February 28, 1933. We also enclose copies of opinions dated October 12, 1938, to Richard Chamier, and October 26, 1949, to Percy W. Gullic. The latter opinions pertain to costs of hospitalization as distinguished from medical expenses as such, but we gather from the last paragraph of your letter that hospital expenses as well as doctor bills were incurred in the cases which are involved in your county. You will note that nothing in Section 221.120 refers to costs of hospitalization.

The enclosed opinion of October 26, 1949, refers to Section 4235 RSMo 1939, which provides in part that the county court, whenever satisfied of the necessity of so doing, may allow a moderate compensation for medical services furnished any sick prisoner, which shall be paid out of the county treasury. The opinion held that under such statute the county court was authorized to pay costs of hospitalization and medical services rendered an indigent prisoner. However, the 1949 revision session of the legislature amended that section (which is now Section 221.150 RSMo) by deleting the authority of the county court to allow compensation for medical services rendered prisoners.

Inasmuch as liability for payment of costs must be based upon express statutory provisions or necessary implication therefrom, we can find no basis upon which the state can be held liable for the medical expenses. So too, the county cannot be held liable absent statutory authority, either express or implied. The statute makes it the duty of the sheriff to procure the necessary medical attention. It is unfortunate that those who provided the necessary medical attention to the prisoners are without remedy against either the state or the

Honorable Paul D. Hess, Jr.

county and that they are unable to collect the expenses from the prisoners because of their indigency. However, this is a deficiency in the law which this office has no authority to supply.

Very truly yours,

NORMAN H. ANDERSON
Attorney General

Enclosures (3)

JN:df/sj