

OPINION NO. 39  
Answered by letter--(Peterson)

March 14, 1967

Honorable C. P. Lehen  
Prosecuting Attorney  
Montgomery County  
Montgomery City, Missouri



Dear Mr. Lehen:

Recently you requested an opinion from this office in a letter in which you stated:

"If an individual is being held in the County Jail, pending trial on a felony charge and requires medical treatment or hospitalization, and thereafter is convicted of a felony for which the State pays the costs, are the medical and hospital expenses part of the costs paid by the State?"

Section 221.120, RSMo 1959, places a duty on the jailer to provide medical attention for sick prisoners. In addition that statute states:

". . . the costs of which shall be taxed and paid as other costs in criminal cases; or the county court may, in their discretion, employ a physician by the year, to attend said prisoners, and make such reasonable charge for his service and medicine, when required, to be taxed and collected as aforesaid." (Emphasis added.)

The language above emphasized, "paid as other costs", has been interpreted by this office in an opinion issued to the Honorable Paul D. Hess, January 26, 1965, a copy of which is enclosed. On page 1 of the enclosed opinion you will find the following language:

Honorable C. P. Lehen

"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. Supp., 168 S.W. 2d 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."

The above quoted language relies in part on an opinion issued to the Honorable Forrest Smith, February 28, 1933. A copy of that opinion is also enclosed.

We believe the two enclosed opinions fairly cover the subject matter of your request and provide the answers to your questions. Medical costs pursuant to Section 221.120, supra, cannot be paid by the State in the absence of a statute specifically directing such payment.

Very truly yours,

NORMAN H. ANDERSON  
Attorney General

WAP/jlf  
Enc.--2

Op. No. 406, Hess, 1/26/65  
Op., Smith, 2/28/33