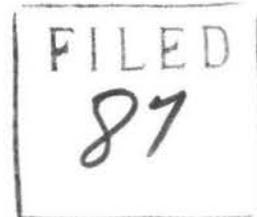


January 28, 1971

LETTER OPINION NO. 87

Honorable James G. Gregory
Prosecuting Attorney
Montgomery County Courthouse
Montgomery City, Missouri 63361



Dear Mr. Gregory:

This is in response to your recent opinion request in which you requested an opinion from this office to the following question:

You state that on April 8, 1970, in the Circuit Court, an eighteen-year-old female defendant entered a plea of guilty to the charge of passing a no-funds check under Section 561.450, RSMo 1969. That after a period of probation, the court under 219.160, RSMo 1969, sentenced the defendant to a period of two years in the State Board of Training Schools.

You ask whether the State is liable for criminal costs incurred in this case.

The State is liable to pay those costs as specified in 550.020, RSMo 1969, which provides as follows:

"1. In all capital cases in which the defendant shall be convicted, and in all cases in which the defendant shall be sentenced to imprisonment in the penitentiary, and in cases where such person is convicted of an offense punishable solely by imprisonment in the penitentiary and is sentenced to imprisonment in the county jail, workhouse or reform school because such person is under the age of eighteen years, the state shall pay the costs, if the defendant shall be unable to pay them, except costs incurred on behalf of defendant."

Honorable James G. Gregory

The penalty provided in Section 561.450 for conviction thereof is as follows:

". . . shall be deemed guilty of a felony and upon conviction thereof be punished by imprisonment by the department of corrections for a term not exceeding seven years or by confinement in the county jail for not more than one year or by a fine of not more than one thousand dollars or by both such confinement and fine."

Under Section 550.020 the State is liable for costs in capital cases; in cases where the defendant shall be sentenced to imprisonment in the penitentiary; and in cases "where such person is convicted of an offense punishable solely by imprisonment in the penitentiary and is sentenced to imprisonment . . . or reform school because such person is under the age of eighteen years. . . ." It is apparent from your inquiry that you are interested only in the application of the third category set forth in Section 550.020. Costs are payable by the State only where the offense is punishable solely by imprisonment in the penitentiary. The penalty provision of Section 561.540 includes penalties other than imprisonment in the penitentiary.

Therefore, the State is not liable for the criminal costs incurred in this matter. Furthermore, you will note that the liability of the State to pay criminal costs in cases where the defendant is imprisoned in an institution other than the penitentiary, arises only where "such person is under the age of eighteen years." Your letter states that the defendant in the instant case is eighteen years of age.

Therefore, it is our conclusion that the Office of the Comptroller was correct in advising that the State is not liable for the criminal costs in the factual situation you describe.

Yours very truly,

JOHN C. DANFORTH
Attorney General