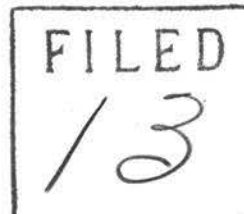


CRIMINAL COSTS: Taxed costs shall include meals, and
PAROLEE: be paid by parolee.

December 2, 1943

Mr. L. M. Bywaters
Assistant Prosecuting Attorney
Clay County
Liberty, Missouri



Dear Sir:

This will acknowledge receipt of your request for an opinion under date of November 19, 1943, which request reads:

"The question has been raised and I would appreciate the opinion of your department, on the following matter: Is it proper in cases of parole to require the parolee to pay, as part of the criminal cost, the board bill for the time that he spent in the County Jail awaiting trial?

"I have searched the Statutes diligently in this connection and I have been unable to determine whether or not a board bill should be included in such cost. If your department will render me an opinion it will be greatly appreciated not only by myself, but by Judge Rooney, Circuit Judge, and Mr. Frank Prewitt, Circuit Clerk of Clay County.

"Thanking you for your cooperation and assistance in this connection, *****"

Costs were unknown to the common law, and hence one's right to costs is wholly dependent on statutory provisions allowing them, and such statutes are to be strictly construed.

In the case of *In re Thomasson*, 159 S. W. (2d) 626, 1. c. 628, affirming 119 S. W. (2d) 433, the court said:

"* * * In the first place costs were unknown to the common law and one's right to costs is now wholly dependent on statutory provisions allowing them. And such statutes are strictly construed. 7 R.C.L., Sec. 2, p. 781; *Van Trump v. Sanneman*, 193 Mo. App. 617, 187 S. W. 124; *Ex parte Nelson*, 253 Mo. 627, 162 S. W. 167. There being no statute specifically allowing costs in such instances or under such circumstances or in such a manner is sufficient to exclude the claims of the appellant. * * * * *

There are many statutes relative to taxing costs in both civil and criminal cases, and under all kinds of conditions and circumstances. In many instances the courts have held the court has much discretion in assessing costs against the various litigants.

Under Section 13416, R. S. Mo. 1939, the sheriff is entitled to board for each meal in an amount not to exceed seventy-five cents per day as fixed by the county court. Section 13416, reads as follows:

"Hereafter sheriffs, marshals and other officers shall be allowed for furnishing each prisoner with board, for each day, such sum, not exceeding seventy-five cents, as may be fixed by the county court of each county and by the municipal assembly of any city not in a county in this state: Provided, that no sheriff shall contract for the furnishing of such board for a price less than that fixed by the county court."

In reading Section 13774, R. S. Mo. 1939, we are inclined to believe that whoever is taxed with the costs in such case shall pay for all meals consumed from the time the arrest is

made by the officer. Section 13774 reads:

"Hereafter when any person or persons shall be confined in the common jail for any criminal offense, the sheriff or jailer may make out and present to the county court at its regular session, a bill for all board due him for the board of such prisoners; such bill shall specify the offense with which each prisoner is charged, and shall be audited and allowed by such county court, and the clerk thereof directed to draw a warrant for the aggregate amount thereof. When the final determination of any criminal prosecution shall be such as to render the state liable for costs under existing laws, it shall be the duty of such county clerk to certify to the clerk of the circuit or criminal court in which the case was determined, the amount due the county for boarding said prisoners; it shall then be the duty of the clerk of the circuit or criminal court in which the case was determined, to include in the bill of costs against the state, all fees for board of prisoners theretofore paid by the county, setting forth the fact that such fees are due the county, and the fees for board which have accrued since the last payment by the county, shall be stated separately as being due the sheriff or jailer. Such fees due the county when collected by the clerk of the circuit or criminal court shall be immediately paid into the county treasury."

Furthermore, Section 4208, R. S. Mo. 1939, specifically requires the parolee to pay all costs or give security for same and in such case he shall, before final discharge pay all of said costs. Section 4208 reads:

"It shall be the duty of the court granting the parole to require the person paroled to pay or give security for the

payment of all costs that may have accrued in the cause, unless the person paroled shall be insolvent and unable to either pay said costs or furnish security for the same. In the latter case the costs shall be paid by the state or county as in other cases without such persons being required to serve any time in jail for nonpayment of fine or costs. Such payment of costs by the state or county shall not relieve such person from liability for the same, but if at any time before his final discharge he shall become able to pay said costs, it shall be the duty of the court to require said costs to be paid before granting a discharge, and said costs when so paid shall be turned into the state or county treasury, as the case may require."

Under Section 13774, supra, there can be no doubt but that meals furnished one incarcerated and awaiting trial are a part of the costs in the case. Furthermore, there is a distinction between one acquitted and one paroled. Parole in no manner means an acquittal or that the parolee is innocent. One of the cardinal rules of statutory construction is to determine the legislative intent, and, if possible, give it that effect, as was stated by the court in *Artophone Corporation v. Coale*, 133 S. W. (2d) 1. c. 347:

"* * * Of course 'The primary rule of construction of statutes is to ascertain the lawmakers' intent, from the words used if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object and "the manifest purpose of the statute, considered historically," is properly given consideration.' *Cummins v. Kansas City Public Service Co.*, 334 Mo. 672, 684, 66 S. W. 2d 920, 925 (7-10). * *"

CONCLUSION

Therefore, in view of the foregoing statutes and authorities, and especially Section 4208, supra, requiring a parolee to pay all costs before a final discharge, we are of the opinion that such meals are a part of the costs and the parolee shall be taxed the costs in the case, which shall include the charge for meals furnished the parolee while in jail awaiting trial.

Respectfully submitted,

AUBREY R. HAMMETT, JR.
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

ARR:CP