

PROBATE COURTS: INSANITY  
HEARINGS: COSTS: HOW TAXED:



Under Sec. 458.080, RSMo 1949, court to order insanity hearing costs paid from insane's estate if sufficient. If insufficient to order county to pay costs; to follow procedure under Sec. 202.160, R.S.Mo 1949. If person discharged to order costs paid by informant, under Sec. 458.090, court cannot legally accept costs from informant or any other person. Under Sec. 49.270, county court can accept for county, reimbursement of amount of maintenance of indigent insane in state hospital when made by one not legally, liable for insane's support, and not from insane's estate.

June 10, 1952

6-11-52

Honorable Philip A. Grimes  
Prosecuting Attorney of Boone  
County  
Columbia, Missouri

Dear Sir:

Your request for a legal opinion of this department has been received and reads as follows:

"Enclosed herewith you will find a letter dated March 21, 1952 from the Honorable Howard B. Lang, Probate Judge of Boone County, Missouri.

"He is seeking some information with reference to the handling of funds as concerns the county and the Probate office. This letter, I think will be self-explanatory. One of his questions, as I see it, is would the Probate Court be acting properly and without any personal liability if he accepted the costs of an incompetency hearing from the persons requesting such hearing, and then, directly disburse this cost out of the proper parties, such as physician, attorney without ever disbursing this money into the county treasury?

"Another aspect of the same question is if this cost is charged to the county and paid out by the county treasurer would the Probate

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Court be acting properly, provided the people are willing to pay the same, if he accepted their gift or donation of the amount of money and then deposited it to the credit of the county. I believe the Probate Judge would prefer the first method in that he would like to handle the money himself and not run it through the county treasury. It should be understood clearly, however, that he is going to have a separate account and keep accurate and complete books on it, which would remain part of the Probate records.

"Another question as I see it is, that in the event a person is adjudged incompetent and is sent to a state institution as a county patient, can the county accept a donation or contribution of the amount which the county pays for such county patient, to-wit: a \$6 a month maintenance as reimbursement; I would appreciate your answer to the above questions."

Section 458.020, RSMo 1949, authorizes sanity hearings to be had in probate court and provides the procedure to be followed. Said section reads as follows:

"If information in writing, verified by the informant on his best information and belief, be given to the probate court that any person in its county is an idiot, lunatic or person of unsound mind, and incapable of managing his affairs, and praying that an inquiry thereinto be had, the court, if satisfied there is good cause for the exercise of its jurisdiction, shall cause the facts to be inquired into by a jury; provided, that if neither the party giving the information in writing, nor the party whose sanity is being inquired into call for or demand a jury, then the facts may be inquired into by the court sitting as a jury."

Section 458.080, RSMo 1949, provides when the county shall be liable for the payment of the costs of holding a sanity hearing, and reads as follows:

"When any person shall be found to be insane according to the preceding provisions, the costs of the proceedings

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shall be paid out of his estate, or,  
if that be insufficient, by the county."

Section 458.090, RSMo 1949, provides when the costs of the  
sanity hearing shall be paid by the informant, and reads as follows:

"If the person alleged to be insane shall  
be discharged, the cost shall be paid by  
the person at whose instance the proceeding  
is had, unless said person be an officer,  
acting officially according to the pro-  
visions of this chapter, in which case the  
cost shall be paid by the county."

In the event the person whose sanity is being inquired into is  
found to be insane, indigent, and a fit subject to be sent to a  
state hospital for treatment, Section 202.160 RSMo 1949, sets out  
the procedure to be followed, and what the court's order shall  
contain. Said section reads as follows:

"If, after such examination, the court  
or the jury, if one shall have been em-  
ployed, shall be satisfied of the truth  
of the facts set forth in the statement,  
the court shall cause a suitable order  
to be entered of record, upon its own  
decision, or, where the verdict of the  
jury has been rendered, upon the verdict.  
And such order shall further set forth  
that the person found to be insane is a  
fit subject to be sent to a state hospital,  
naming the particular hospital, to undergo  
treatment therein; and shall further require  
the medical witness forthwith to make out  
such a detailed history of the case as is  
required by section 202.200; and, also, that the  
costs of this examination be paid out of the  
treasury of the county; thereupon, the clerk or  
judge of the court shall forthwith issue a  
certified copy of the court's order and com-  
mitment, and deliver the same to the officer  
or person who is to transmit such patient to  
such hospital. The clerk or judge shall, there-  
upon, in due season, for conveyance of such  
person to the state hospital by the appointed  
time, issue his warrant to the sheriff of his  
county, or any other suitable person, command-  
ing him forthwith to arrest such insane person

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and convey him to the state hospital designated in the order. If the clerk or judge be satisfied of its necessity, he may authorize one or more assistants to be employed."

It is noted that your first question deals with the subject of the costs of insanity hearings and specifically inquires whether the court may legally accept the costs from persons requesting the hearing, (whom we take to refer to informants) and then if the court is authorized to: (1) pay the costs to each person to whom costs are due by reason of the hearing, (2) or if the county court may accept the costs and pay it to the county treasurer who would then pay it to those entitled to costs.

In regard to the subject of costs in civil proceedings (and in the case of *Terry v. Holtcamp*, 51 S.W. (2d) 13, it was held that an insanity proceeding was a civil, rather than a criminal proceeding) it has long been the rule that costs are matters governed by statute. In the case of *Ex Parte Nelson*, 253 Mo. 627, the court said at l.c. 628:

"At common law no costs were recoverable. (*City of St. Louis v. Meintz*, 107 Mo. 611.) Costs in Missouri being therefore, purely creatures of the statute, enactments in relation thereto must be strictly construed. (*State ex rel. v. Seibert*, 130 Mo., l.c. 217; *St. Louis & Gulf Railway Co. v. Cape Girardeau, etc, Railway Co.* 126 Mo. App. 272; *Lucas v. Brown*, 127 Mo. App. 645.)"

In the case of *In Re Thomasson*, 159 S.W. (2d) 626, in discussing the subject of costs, the court at l.c. 628 said:

"Assuming, even, that a court may enter a judgment for costs though dismissing or abating the cause for want of jurisdiction (*Ensworth v. Curd*, 68 Mo. 282; *State v. Thompson*, 81 Mo. 163), yet we are of the opinion that the circuit court had no jurisdiction to enter a judgment for the costs against the estate of Thomasson, after the entry of appearance by the administratrices now representing Thomasson and yet one of them being the informant in the principal proceeding and his adversary in the ninety-day trial on the pleas to the jurisdiction. The parties do not cite us to a statute or a case specifically covering a situation such as we have here. 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, p. 781; *Van Trump*

v. Senneman, 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. City of St. Louis v. Meintz, 107 Mo. 611, 18 S.W. 30; State ex rel. Clarke v. Wilder, 197 Mo. 27, 94 S.W. 499. Our statutes governing insanity proceedings, such as were instituted here (Art. 18, Ch. 1, Sections 447-508. RS Mo. 1939, Mo. St. Ann. Sections 448-507, pp. 280-304) allow costs paid out of an alleged insane person's estate when he 'shall be found to be insane, according to the preceding provisions' and if he be discharged the costs are to be paid by the informant. Sections 453, 454, R.S. Mo. 1939, Mo. St. Ann. Sections 454, 455, p. 286. And so, there being no statute fitting the facts of this case there would be no jurisdiction to award costs as was done, presumably by piecing several statutes together and giving them a most liberal construction."

(Underscoring ours.)

In view of the holdings in the above quoted cases and statutes, it appears quite clear how the costs of an insanity proceeding shall be taxed.

In the event the person whose sanity is being inquired into is found to be insane by a jury, or by the court sitting as a jury, and the court finds that the insane person has an estate and is financially able to pay the costs, then it shall be the duty of the court to order the costs of the proceedings paid by the curator of the estate of the insane person under the provisions of Section 458.080, supra. However, if the court finds that the estate of the insane person is insufficient to pay the costs, then it shall be the further duty of the court to so state in his order and proceed in the manner provided by Sections 458.080 and 202.160, RSMo 1949, supra.

In the event the alleged insane person is not found to be insane by either a jury, or the court sitting as a jury, then it becomes the duty of the court to discharge said person and to order the informant to pay the costs of the proceeding, as provided by Section 458.090, supra.

It is our thought that upon the specific findings of fact having been made in either instance under the provisions of above

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statutes, that it is the mandatory duty of the court to order the costs to be paid from the estate of the insane person, by the county, or by the informant, as the case may be. The payment of costs cannot be ordered paid by any other person, officer or corporation, and it appears to us that if the court were to accept cost donations from the informants in an insanity proceeding that the court's order would be required to show (under the above statutes) against whom the costs had been taxed.

Such a proceeding for the payment of costs as suggested in your letter is not authorized by above statutes, and, in the Thomasson case cited above where it was suggested to the court that costs of an insanity proceeding could not be taxed in a manner different from that provided by specific statutes governing the procedure, and we repeat what the court said regarding the matter:

"And so, there being no statute fitting that the facts of the case there would be no jurisdiction to award costs as was done presumably by piecing several statutes together and giving them a most liberal construction."

Therefore, in answer to your first inquiry, for the reason given above, it is our thought that the probate court of your county lacks the power to accept the costs of an insanity proceeding pending before him when such costs are tendered to him by the informants, or others and upon acceptance to order:

- (1) Said costs paid out directly to those entitled to costs in the proceeding;
- (2) To order said costs paid to the county treasurer, who will in turn pay them to those entitled to costs in the proceeding.

It appears that in taxing the costs of such hearings the court must strictly follow the procedure outlined in above cited statutes, and has no power or authority to follow any other procedure than that provided by said statutes.

We have given it as our thought above in answer to your first inquiry that the probate court cannot legally accept the costs of and insanity hearing from the informant or others for the purpose of (1) paying the costs directly to those entitled to them or of (2) paying the costs to the county treasurer, who in turn would pay them to those entitled to said costs. In this connection it is our further thought that the court cannot legally accept a cost donation of an insanity hearing from any person for any purpose, but that the county is not precluded from accepting a donation of costs of such a hearing from the informant or others.

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Section 49.270, RSMo 1949, among other things provides that the county court is authorized to accept donations of any property, real or personal, for the use and benefit of the county, and reads as follows:

"The said court shall have control and management of the property, real and personal belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods, or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

(Underscoring ours.)

It is noted that the provisions of Section 49.270, supra, places no limitations or conditions upon the power of the county court to accept donations of property for the benefit of the county, and in the absence of same it appears that the county court is thereby the benefit of the county.

Therefore, it is our thought that the probate court cannot legally accept the costs of an insanity hearing from the informant or any other person, but the costs of such proceeding may be donated to the county by the informant or others, and under the provisions of Section 49.270, supra, the county court is authorized to accept such donation for and on behalf of the county.

In the second inquiry the facts involved in the hypothetical case are these: One is adjudged insane and committed to the state hospital for treatment as a county patient and, query: "can the county accept a donation or contribution of the amount which the county pays for such county patient, to-wit: a \$6 a month maintenance as reimbursement?"

It is noted that neither the inquiry or the facts upon which it is based state by whom the donation to the county might be made, whether from the curator of the insane person's estate; some other person legally liable for his support, or whether by some person, or from some other source not legally responsible for the support of the insane person.

In the event the inquiry was meant to refer to those instances when the donation to the county might be made by the curator, from

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the estate of the insane person, or by someone legally liable for his support, then it is believed that the opinion of this department furnished to you on February 18, 1952, fully covers the matter of inquiry and we refer you to that opinion for further consideration.

In the event the inquiry was meant to refer to those instances when the proposed donation or reimbursement to the county is to be made by someone other than the guardian and curator of the person and estate of the insane person, who is not legally liable for the support of such person, then a different aspect of your second inquiry is presented for our consideration.

The donation to the county of six dollars per month for the maintenance of a county patient in a state hospital, paid by a county as referred to in your second inquiry, is in the same class as all other donations tendered to the county, under the provisions of Section 49.270, supra. For the reasons given above, and which we find unnecessary to repeat here, it is our thought that the county court may legally accept, for the benefit of the county, the donation of six dollars per month as reimbursement for that amount which the county has been required to pay for the maintenance of a county patient in a state hospital.

Therefore, our answer to your second inquiry is in the affirmative.

#### CONCLUSION

It is therefore the opinion of this department that in taxing the costs of an insanity hearing when the alleged insane person is found to be insane and is committed to a state hospital for treatment it shall be the duty of the probate court to tax the costs of the proceeding, and order same paid by the curator out of the estate of the insane person if said estate is sufficient, but if said estate is insufficient the court shall tax said costs against the county, as provided by Section 458.080, RSMo 1949, and in making such finding and order, the court shall follow the procedure provided by Section 458.090, RSMo 1949. That the above cited sections provide the complete statutory method for the taxing of costs of an insanity proceeding in probate court, and such court lacks the power and cannot legally accept the costs from the informant or any other person, but must follow the statutory procedure for the taxation of costs in said insanity proceedings. However, the costs of such proceeding may be legally donated to the county under the provisions of Section 49.270 RSMo 1949, and may be accepted by the county court for and on behalf of the county.



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It is the further opinion of this department that a county court, under the provisions of Section 49.270, RSMo 1949, may accept a donation, or reimbursement on behalf of the county of the amount the county is required to spend for the maintenance of an indigent insane person in a state hospital when said donation is made by one not legally liable for the support of the insane person, and when the donation is from some other source than the estate of such insane person.

Respectfully submitted,

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APPROVED:



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J. E. TAYLOR  
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