

CIRCUIT CLERKS - Duty to include all costs in criminal costs bill.  
CRIMINAL COSTS - Duty of circuit clerk in making criminal costs bill.

3-13

March 10th, 1934.



Hon. Ellis W. Howlett  
Clerk of Circuit Court  
Mississippi County  
Charleston, Missouri

Dear Sir:

We received your letter of February 20th, 1934, asking for an opinion upon the duties of the circuit clerk in certifying to criminal costs bills. In this connection, we call your attention to Section 3341, R. S. Mo. 1929:

"The clerk of the court in which any criminal cause shall have been determined or continued generally shall, immediately after the adjournment of the court and before the next succeeding term, tax all costs which have accrued in the case; and if the state or county shall be liable under the provisions of this article for such costs or any part thereof, he shall make out and deliver forthwith to the prosecuting attorney of said county a complete fee bill, specifying each item of services and the fee therefor."

You will note that the above section requires the circuit clerk, in making out the costs bill, to tax all costs which have accrued in the case. The circuit clerk is not required to be the judge of the law and the facts in making out costs bills. It is the duty of the clerk to make out such costs bills and include thereon all fees due officers and witnesses, and other costs that have accrued in the case. Costs which have been specifically taxed against the defendant need

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not be included in the costs bill certified to the state or county.

It is made the duty of the prosecuting attorney and the judge of the circuit court to pass upon the facts and the law relating to each cost bill, and this duty is specifically detailed in Section 3842, R. S. No. 1929, wherein it is made the duty of the prosecuting attorney to ascertain,

- 1st. Whether the services have been rendered for which charges were made.
- 2nd. Whether the fees charged are expressly given by law for such service.
- 3rd. Whether greater charges are made than the law authorizes.
- 4th. Whether said fee bill has been made out according to law.
- 5th. Whether any errors have been made, and if so to correct all errors.
- 6th. To report his finding of fact, conclusions of law, and corrections on the costs bills of the circuit judge.

If it appears to the circuit judge that the prosecuting attorney's findings, conclusions, and corrections are formal and correct, then the circuit judge and the prosecuting attorney shall certify the costs bill to either the state or county, depending upon which is liable for the costs.

It is the opinion of this office that the clerk has no discretion in making out costs bills, and that the same should include all costs which have accrued in the case. Discretion is vested in the circuit judge and the prosecuting attorney to check over and correct these costs bills and to pass upon the law and the facts of each case. This discretion of the circuit judge and the prosecuting attorney cannot be con-

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trolled by mandamus. -State v. Oliver, 116 Mo. 188.

When a criminal costs bill is certified by the circuit judge and the prosecuting attorney to the county, then under the provisions of Section 3845, R. S. No. 1929, the county court must pay that costs bill. - State ex rel. Appleby, 136 Mo. 408 (1896).

It is, therefore, the opinion of this office that in making out criminal costs bills, the circuit clerk should certify all costs in the costs bill, and the prosecuting attorney and circuit judge will decide from the facts and the law whether the fees in that costs bill are properly chargeable to the state or county.

Respectfully submitted,

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APPROVED:

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Attorney General

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