

Construction of Section relative to time required  
to be done for costs.

8-23  
August 9, 1934



Honorable Ray L. Kay  
Prosecuting Attorney  
California, Missouri

Dear Sir:

This department is in receipt of your letter dated  
June 25, 1934, requesting an opinion upon the following inquiry:

"I would like to have your opinion of the construction of Section 3859, R. S. Mo. 1929, regarding to the time required to be done for costs. I have always construed it to mean, if the costs exceeds the sum of \$40.00, then the insolvent is allowed \$2.00 per day on the payment of his costs. And if the costs is \$40.00 or less, then the insolvent does twenty days, regardless of the amount of costs. My reason for so construing it is that the last clause of the Section is a modification of the first clause, and also that the legislature intended to penalize those who have a small cost bill for failure to pay costs.

Please give me your opinion on this matter. Take for example an insolvent who has a cost item of \$300.00 assessed against him and one who has a cost bill of \$10.00 assessed against him. In the first clause of the Section, as I see it, the one having \$300.00 assessed would have to serve 150 days before he could be released, and could not be released on serving 20 days. In the last clause of the Section, as I understand it, if the one against whom \$10.00 is assessed, if he fails to pay the amount, he would do 20 days as a penalty for failure to pay."

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Section 3859, R. S. No. 1929, seems to control the point which this opinion covers. Said Section reads as follows:

"Any person detained in prison for the non-payment of any fine or costs on account of any criminal proceeding may be ordered to be discharged from such imprisonment, by the court or by the judge of the court having criminal jurisdiction for the county in which he may be, or by the clerk of said court in vacation, after being imprisoned one day for every two dollars of such fine and costs, or after having endured twenty days' actual imprisonment for the nonpayment of costs, if he be unable to pay the same. (R. S. 1919, 4202)".

You will note that the first underscoring includes the phrase "fine or costs", that likewise the second underscoring includes the phrase "fine and costs". Up to this point I believe the statute, undoubtedly, must be interpreted to mean that the total amount of the fine and costs must be worked out at the rate of \$2.00 per day.

The last clause of this paragraph beginning with the underscored "or" contemplates only the nonpayment of the costs by the prisoner, as you will perceive "costs" in this clause is not joined with the word "fine". In the event of such a situation occurring, i.e., payment of the fine and the nonpayment of the costs, then the prisoner is required to serve twenty days in order to discharge the costs. Under this construction of the statute, the prisoner must serve twenty days for the nonpayment of costs, and no more.

It is, therefore, the conclusion of this department that any prisoner detained in prison for nonpayment of fine and costs must discharge the said fine and costs at the rate of \$2.00 per day for each day of imprisonment, but that if only a cost bill is due the county by the prisoner, he must be detained twenty days in lieu of nonpayment of costs.

Respectfully submitted,

  
Assistant Attorney General

APPROVED:

ROY McKITTRICK  
Attorney General