

CRIMINAL COSTS: Upon felony conviction State should not  
pay defendant's witness fees.

June 2, 1943

Honorable William E. Shirley  
Prosecuting Attorney  
Adair County  
Kirksville, Missouri



Dear Sir:

This is in reply to your letter of May 27, 1943, in which you request an opinion, as follows:

"In a case in which a man is charged with a felony, tried and convicted is the State liable for the costs made by the defendant?"

Section 4220 R. S. Missouri, 1939, reads as follows:

"Whenever any person shall be convicted of any crime or misdemeanor he shall be adjudged to pay the costs, and no costs incurred on his part, except fees for board, shall be paid by the state or county."

Under this section, when a person is convicted of any felony, or misdemeanor, he must pay the cost and neither the State nor county is compelled to pay the costs incurred on his part, except fees for board. Also, under this section, witnesses subpoenaed by the defendant must look to him to receive their witness' fees, where the defendant has been convicted either of a felony or misdemeanor. The rule is different where a defendant has been acquitted on a charge where the punishment is capital punishment, or confinement solely in the Penitentiary.

Section 4239 R. S. Missouri, 1939, reads as follows:

June 2, 1943

"When a fee bill shall be certified to the state auditor for payment, the certificate of the judge and prosecuting attorney shall contain a statement of the following facts: That they have strictly examined the bill of costs; that the defendant was convicted or acquitted, and if convicted, the nature and extent of punishment assessed, or the cause continued generally, as the case may be; that the offense charged is a capital one, or punishable solely by imprisonment in the penitentiary, as the case may be; that the services were rendered for which charges are made, and that the fees charged are expressly authorized by law, and that they are properly taxed against the proper party, and that the fees of no more than three witnesses to prove any one fact are allowed. In cases in which the defendant is convicted, the judge and prosecuting attorney shall certify, in addition to the foregoing facts, that the defendant is insolvent, and that no costs charged in the fee bill, fees for board excepted, were incurred on the part of the defendant."

This section provides for the certification to the state auditor for the payment of the fee bill, and the judge and prosecuting attorney shall certify that the defendant is insolvent and further provides, "and that no costs charged in the fee bill, fees for board excepted, were incurred on the part of the defendant."

Section 4221 R. S. Missouri, 1939, reads as follows:

"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. And in all cases of felony, when the jury are not permitted to separate, it shall be the duty of the sheriff in charge of the jury, unless otherwise ordered by the court, to supply them with board and lodging during the time they are required by the court to be kept together, for which a reasonable compensation may be allowed, not to exceed two dollars per day for each jurymen and the officer in charge; and the same shall be taxed as other costs in the case, and the state shall pay such costs, unless in the event of conviction, the same can be made out of the defendant."

Under the above section, where the defendant has been convicted in a capital case, or has been sentenced to imprisonment in the Penitentiary, or in cases where such person is convicted, punishable solely by imprisonment in the Penitentiary, but has been confined elsewhere on account of his age, the State must pay the costs, except costs incurred by the defendant where the defendant is insolvent. Also under this section the State is not required to pay witness fees to defense witnesses. Witnesses for the defendant must look to the defendant for their fees. A continuance at the request of the defendant is a judgment against the defendant and should not be contained in the fee bills. It was so held in State of Missouri, Respondent v. S. G. Barker, 63 Mo. App. 535.

The entire subject of costs in both civil and criminal cases is a matter of statutory enactment, and, as such statutes must be strictly construed, the officer, or other person claiming costs which are contested must point out the statute authorizing their taxation. (Ring v. Charles Vogel Paint & Glass Co., 46 Mo. App. 374; State ex rel. Clarke v. Wilder, 94 S. W. 499, 197 Mo. 27.) Sections

Honorable William E. Shirley (4)

June 2, 1943

4220 and 4221, supra, specifically forbid the State to pay costs accrued on behalf of the defendant.

CONCLUSION

It is, therefore, the opinion of this department, that where a defendant has been convicted on a felony he should be adjudged to pay the costs, but, if the defendant shall be unable to pay costs, then the State should pay the costs, except costs incurred on behalf of the defendant.

It is further the opinion of this department, that in no event, in case of a conviction of a defendant on a felony, should the State pay the fees of defendant's witnesses, or the costs of continuances granted at the request of the defendant.

Respectfully submitted

W. J. BURKE  
Assistant Attorney General

APPROVED BY:

---

ROY McKITTRICK  
Attorney General of Missouri

WJB:RW