

CORONER'S INQUEST: County to pay cost thereof.

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Mr. J. P. Smith
Prosecuting Attorney
Webster County
Marshfield, Missouri

Dear Sir:

This will acknowledge your request for an opinion, based on the following facts:

"This inquest was held over Tom Cantrell, and Charles Bruce was charged killing him, Bruce was tried for murder in the first degree, and verdict 'Not Guilty.'

"The Circuit Clerk thinks the state should pay the cost of the inquest, and ask me to write your office for an opinion as to who pays the cost of the inquest.

"As per his request I kindly ask you to let me know who is to pay the cost so I can tell him what you say in the matter."

Your attention is called to the following sections of the Missouri Revised Statutes Annotated, 1939:

Section 13231.

"Every coroner, so soon as he shall be notified of the dead body of any person, supposed to have come to his death by violence or casualty, being found within his county, shall make out his warrant, directed to the constable of the township where the dead body is found, requiring him forthwith to summon a jury of six good and lawful men, householders of the same township, to appear before such coroner, at the time and place in his

warrant expressed, and to inquire, upon a view of the body of the person there lying dead, how and by whom he came to his death."

Section 13251.

"The coroner or other officer holding an inquest, as provided for by this chapter, shall present to the county court a certified statement of all the costs and expenses of said inquest, including his own fees, the fees of jurors, witnesses, constables, and others entitled to fees for which the county is liable; and the county court shall audit and allow the same, and shall make a certified copy of the same, without delay, and deliver such copy to the county treasurer, which copy shall be deemed a sufficient warrant or order on the treasurer for the payment of the fees therein specified to each person entitled to such fees. The county treasurer shall pay to each person on demand, or to his legal representatives, the fees to which he is thus entitled, and shall take the proper receipt therefor, and produce the same in his settlements with the county court as vouchers for the money so paid out by him."

The Supreme Court of Missouri, in the case of State v. Bartley, 34 Mo. (2d) 637, l.c. 639, 357 Mo. 229, held that a coroner's inquest is not a part of a criminal prosecution. It follows; therefore, that the costs and expenses of holding an inquest would not be a part of the costs paid by the state in a criminal case.

In construing these statutes the Court said in the case of Houts v. McCluney, 102 Mo. 13, l.c. 16:

"Now a little attention to these statutes will relieve this case of all difficulty. In the first place, no costs are allowed by the common law. They are, with us, creatures of the statute. They must be paid in the amounts and in the manner"

specified in the statute. Sections 5156 and 5613 are clear and unambiguous. They make the county liable for the fees allowed the coroner, jurors, witnesses and the constable in all inquests where the coroner has reasonable cause to believe that the person, over whose body the inquest is held, came to his death by violence or casualty.
* * * *"

Conclusion.

It is, therefore, the opinion of this department that the expenses of holding the inquest mentioned in your request must be paid by the county.

Respectfully submitted,

W. BRADY DUNCAN
Assistant Attorney General

APPROVED:

J. W. TAYLOR
Attorney General

WED:ml