

C RIMINAL COSTS

) State liable for costs of proceedings in juvenile
) court only where defendant is convicted of
) offense for which ~~life~~ punishment is imprison-
) ment in the penitentiary *or death.*

March 6, 1950

3/8/50

Honorable E. L. Pigg
State Comptroller
Jefferson City, Missouri



Attention: O. L. Peters

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"The 1947 Laws of Missouri, Volume 2, page 321 shows the repeal of Sections 8993 to 9012, inclusive of Revised Statutes of Missouri 1939 and the enactment of new sections relating to the control and regulations of State Training School for Boys and Girls.

"This department therefore desires an opinion from your office in regard to the question as to whether or not the State is liable, under the new law, for the costs of proceedings in either circuit court or juvenile divisions, in which the defendant or child is convicted of a crime and is sentenced or committed to the Missouri Training School for Boys, the Industrial Home for Girls, or the Industrial Home for Negro Girls.

"In other words is the State in any event liable for costs in any case in which the person is sentenced or committed to any of the above institutions, or is paroled or acquitted, or the case dismissed."

Section 8994, Laws of 1947, Volume II, page 320, provides

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in part as follows:

"(1) Any boy over the age of 12 years and under the age of 17 years and any girl over the age of 12 years and under the age of 21 years who has been convicted of a crime or who is found by the juvenile or circuit court to be in need of training school education and discipline may be committed to the state board of training schools. Except where a child who is convicted of a crime and sentenced for a period of time which will not expire until after his 21st birthday, all commitments to the Board shall be made for an indeterminate period of time."

Section 9004, Laws of 1947, Volume II, page 320, provides:

"In all cases in which children are committed to the board of training schools, the juvenile officer shall deliver the children to the institution designated by the board, and shall be allowed the necessary expenses incurred in such delivery for himself and the child and in returning therefrom, to be paid by the county."

Section 9004, R. S. Missouri, 1939, now repealed, (Laws of Missouri, 1947, Volume II, page 320) provided:

"In all cases of conviction of felony, wherein the punishment is commitment to the Missouri training school for boys, the cost of the proceedings and of the delivery of such person to the Missouri training school for boys shall be paid by the state; and in all cases of misdemeanor, wherein the punishment is commitment to the Missouri training school for boys, the cost of the proceedings and of the delivery of such person to the Missouri training school for boys shall be paid by the county in which the conviction is had. The sheriff, marshal or other person charged with the delivery of any person to the Missouri training school for boys shall be allowed the necessary traveling expenses of himself and such person, and

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a per diem of two dollars for the time actually occupied in taking such person to said Missouri training school for boys and in returning therefrom, to be paid by the state or county, as the case may be."

No new section was enacted by the Legislature following the repeal of Section 9004, R. S. Missouri, 1939, so that there is now no statute expressly covering the matter of costs on the proceeding resulting in the commitment of a person to the care of the State Board of Training Schools.

Section 9676, R. S. Missouri, 1939, applicable to proceedings in juvenile courts in counties having a population of over 50,000, provides in part:

" * * * On the return of the summons or other process, or as soon thereafter as may be, the court shall proceed to hear the case in a summary manner, and if it shall determine that the child is a 'neglected child' within the definition thereof contained herein, shall enter its order or judgment accordingly under the provisions of this article; and the cost of the proceedings may, in the discretion of the court, be adjudged against the petitioner, or any person or persons summoned, or appearing as the case may be, and collected as provided by the law in civil cases. All costs not so collected shall be paid by the county. * * *"

Section 9703, R. S. Missouri, 1939, applicable to proceedings in juvenile courts in counties with populations of less than 50,000 contains a similar provision regarding costs. These sections are, however, applicable in proceedings in the juvenile court for the determination of the question of whether or not a child is a neglected child, and do not apply to proceedings under the criminal law which result in the commitment of a child to the State Board of Training Schools.

Section 4221, R. S. Missouri, 1939, (Amended Laws of 1945, page 844) provides in part as follows:

"In all capital cases in which the defendant shall be convicted, and in all cases

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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. * * *

Section 4223, R. S. Missouri, 1939, provides:

"In all capital cases, and those in which imprisonment in the penitentiary is the sole punishment for the offense, if the defendant is acquitted, the costs shall be paid by the state; and in all other trials on indictments or information, if the defendant is acquitted, the costs shall be paid by the county in which the indictment was found or information filed, except when the prosecutor shall be adjudged to pay them or it shall be otherwise provided by law."

Section 4221, was originally enacted as Section 2829, R. S. Missouri, 1899. At that time the institution maintained by the state for the commitment of persons under the age of seventeen was known as "reform school." The present arrangement whereby such institution is known as the Missouri State Training School was adopted pursuant to Section 38, Article IV, Constitution of Missouri, 1945.

"Costs ordinarily may be imposed and recovered only in cases where there is statutory authority therefor, and only in the instances, to the extent and in the manner provided for by statute." (20 C.J.S., Costs, Section 2, page 259)

In the case of Cramer v. Smith, 350 Mo. 736, 168 S.W. (2d) 1039, at l. c. 1040, the court quoted with approval from 20 C.J.S., Costs, Section 435, page 677, as follows:

"At common law, costs of such in a criminal case were unknown. As a con-

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sequence, it is the rule, as well in criminal as in civil cases, that the recovery and allowance of costs rests entirely on statutory provisions -- that no right to or liability for costs exists in the absence of statutory authorization. Such statutes are penal in their nature and are to be strictly construed."

We are of the opinion that Section 4221, R. S. Missouri, 1939, imposes upon the state the liability to pay costs in criminal proceedings, in which, were the defendant over the age of seventeen years, the only punishment provided would have been imprisonment in the state penitentiary. We are further of the opinion that liability on the part of the state for costs in such proceedings exists only in such cases. Section 4223, R. S. Missouri, 1939, would not impose upon the state liability for costs upon the acquittal of a person charged with criminal offense, the sole punishment for which would have been imprisonment in the state penitentiary, had the defendant not been a person who might be committed to the custody of the State Board of Training Schools. In the case of State ex rel. Clarke v. Wilder, 94 S.W. 499, 197 Mo. 27, the Supreme Court held that under this section the state was not liable for the costs in the case of the acquittal of a person under the age of sixteen years in the juvenile court on a charge of murder in the second degree. The court held that inasmuch as the defendant in that case might have been committed to the state reformatory, commitment to the state penitentiary was not the only punishment for the offense of which he had been acquitted, and, therefore, Section 4223 did not impose liability for costs upon the state.

Liability is imposed upon the state, under Section 4221, upon conviction for the offense. The power of parole may not be exercised until there has been a judgment or sentence of punishment (Section 4200, R. S. Missouri, 1939, State v. Hockett, 129 Mo. App. 639, 644, 108 S.W. 599.) Therefore, liability for costs would be unaffected by parole.

CONCLUSION

Therefore, this department is of the opinion that the state is liable for costs of proceedings in juvenile court in which the defendant is convicted of an offense, for which, were he not a person who may be committed to the custody of the state

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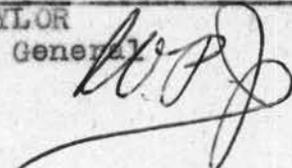
board of training schools, the only punishment provided would have been death or imprisonment in the state penitentiary, and that the state is not liable for costs in any other proceedings in juvenile court, whether the defendant be convicted of an offense for which imprisonment in the penitentiary is not the sole punishment, or whether the defendant be acquitted. Parole of the defendant does not alter the liability of the state.

Respectfully submitted,

APPROVED:

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Attorney General



RRW/feh