

6906

COST BILL—EXPENSE OF TRANSPORTING A WITNESS FROM PENAL INSTITUTION TO PLACE OF TRIAL AND RETURN—AUDITOR OF STATE—REQUIRED TO ALLOW REIMBURSEMENT ONLY FOR SUCH AMOUNT AS HE FINDS REASONABLE AND NECESSARY—SECTION 2949.18, R.C.— SECTION 2949.19, R.C.

SYLLABUS:

The auditor of state is required to allow reimbursement for a cost bill submitted under the provisions of Sections 2949.18 and 2949.19, Revised Code, in such amount as he finds reasonable and necessary. Where, in the opinion of the auditor, an excessive amount is listed on such cost bill as the expense of an officer in transporting a witness from a penal institution to the place of trial and return, he may allow reimbursement for only so much thereof as is considered to have been reasonably incurred.

Columbus, Ohio, July 24, 1956

Hon. James A. Rhodes, Auditor of State
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, which reads as follows:

“The Auditor of State, in accordance with the provisions of Sections 2949.14, 2949.17, 2949.18 and Section 2949.19 of the Revised Code, distributes the appropriation made by the legislature for a biennium period to those counties entitled thereto.

“Therefore, upon conviction and sentence of a person for a felony the Clerk of Courts of Common Pleas shall make and certify under his hand and seal of the Court, a complete itemized bill of costs made in such prosecution. Upon delivery of such felon to a State Penal Institution, the person in charge prepares a cost bill for the fees for transportation.

“Under date of April 1, 1956, new travel regulations were issued by the Director of the Department of Finance, wherein several changes were made in regard to mileage fees and sustenance for state employees using personally owned automobiles.

“This brings up our question in regard to fees for the transportation of convicts from State Penal Institutions to any county in Ohio to testify as a witness in Common Pleas Court in

criminal cases. The charge for this service is listed on the Prosecution Cost Bill under 'Witnesses' and is termed 'Guard Expenses.' Section 2945.48 of the Revised Code reads as follows:

"Sec. 2945.48, 13444-9. Witness may be placed in jail.

"When a witness mentioned in section 2945.47 of the Revised Code is in attendance upon a court he may be placed in the jail of the county. The expenses of the officer in transporting him to and from such court, including compensation for the guard or attendant of such prisoner not exceeding the per diem salary of such guard for the time he is away from said institution, shall be allowed by the court and taxed and paid as other costs against the state."

"In order that we may advise all of Ohio's eighty-eight counties relative to the amount of fees allowed and reimbursable by the State and according to State Statutes, we will appreciate your opinion on the following questions:

"1. What fees shall the Court allow in respect to each trip?

"2. Shall mileage be paid for each individual making the trip, guard and prisoner or prisoners, or just pay single mileage when two or more make the same trip in one automobile?

"3. Relative to meals and lodging, what shall be allowed?

"We are much concerned as we must determine the correct amount of reimbursement for this type of service and the charges to be collected in relation thereto."

Section 2945.47, Revised Code, provides in substance that where the testimony of a person imprisoned in a penal institution is considered necessary on the trial of an issue upon an indictment, or on a hearing before a grand jury, a subpoena may issue commanding the keeper of such institution to bring the prisoner before the court.

Section 2945.48, quoted above in your request, provides that the expenses of the officer in transporting the prisoner to and from the court shall be taxed as costs in the prosecution.

In accordance with the provisions of Section 2949.14, Revised Code, upon sentence of a person for a felony, an itemized bill of costs is prepared and certified by the clerk of courts. This section further provides:

"* * * Such bill of costs shall be presented by such clerk to the prosecuting attorney, who shall examine each item therein charged and certify to it if correct and legal."

The expenses incurred by the guard in transporting an inmate for whom a subpoena to appear as a witness had been issued, will therefore appear upon the cost bill prepared and certified in accordance with the provisions of the above section.

Section 2947.23, Revised Code, provides in pertinent part as follows:

“In all criminal cases, including violations of ordinances, the judge or magistrate shall include in the sentence the cost of prosecution and render a judgment against the defendant for such costs. * * *”

Proceedings in execution against the property of a convicted felon for the payment of costs are provided for by Section 2949.15, Revised Code.

Sections 2949.16, 2949.18 and 2949.19, Revised Code, thereafter provide as follows:

Section 2949.16:

“If a convicted felon is sentenced to imprisonment or death, and no property has been levied upon, the sheriff shall deliver a certified cost bill as prescribed by section 2949.14 of the Revised Code, having accredited thereon the amount paid on costs, with the convict to the person in charge of the penal institution. When property has been levied upon and remains unsold, the clerk of the court of common pleas shall not certify to the sheriff the costs of such conviction for payment from the state treasury, but the convict shall be delivered to the penal institution in pursuance of his sentence, upon the payment of the costs of transportation.”

Section 2949.18:

“When the clerk of the court of common pleas certifies on a cost bill that execution was issued under section 2949.15 of the Revised Code, and returned by the sheriff ‘no goods, chattels, lands, or tenements found whereon to levy,’ the person in charge of the penal institution to which the convicted felon was sentenced shall certify thereon the date on which the prisoner was received at the institution and the fees for transportation, whereupon the auditor of state shall audit such cost bill and the fees for transportation, and issue his warrant on the treasurer of state for such amount as he finds to be correct.”

Section 2949.19:

“Upon return of the writ against a convict issued under section 2949.15 of the Revised Code, if an amount of money

has not been made sufficient for the payment of costs of conviction and no additional property is found whereon to levy, the clerk of the court of common pleas shall so certify to the auditor of state, under the seal of the court, with a statement of the total amount of costs, the amount paid, and the amount remaining unpaid. Such unpaid amount as the auditor of state finds to be correct, shall be paid by the state to the order of such clerk.”

It is apparent from a reading of these sections that the county in which the felon was convicted is entitled to reimbursement from the state in an amount equal to that portion of the prosecution cost bill which is not collectible against the convicted felon.

The auditor of state is not required, however, to issue a warrant for the *full* amount appearing on the cost bill as certified by the clerk and prosecuting attorney.

The provisions under discussion were considered in the case of State, ex rel. v. Guilbert, 77 Ohio St., 333, wherein it was stated at page 342 of the opinion :

“* * * These provisions, that the clerk shall make up and certify the cost bill, that the prosecuting attorney shall examine into the correctness and legality of each item, and that the warden shall only certify what he finds correct, and that the auditor of state shall not draw a warrant unless he finds the claim legal, are *cumulative safeguards* of the public funds. And being such, the auditor of state is not concluded by the determination of the prosecuting attorney, * * *.” (Emphasis added.)

The court in the Guilbert case found that the compensation of an expert witness was not authorized by law to be included in the bill of costs of prosecution, and that the state auditor was therefore not required to issue a warrant for the payment of this item. I do not, however, believe that the authority of the auditor to reject any item appearing upon the cost bill is restricted to the rejection of an entire item which is found to be unauthorized by law.

The liability of the state for the payment of costs is limited by Section 2949.19, Revised Code, to “such unpaid amount as the auditor of state *finds to be correct.*” The auditor would therefore be justified in adjusting any item appearing upon the cost bill which he has reason to believe is unwarranted or excessive.

I do not deem it to be within my province, however, to prescribe more specifically the amounts which should be allowed for mileage, meals or lodging. I can only direct your attention to the language of Section 2945.48, Revised Code, which provides that only the expenses of the transporting officer should be taxed and paid as other costs against the state.

Rather than to allow, reject or adjust the amount for this item as each cost bill is submitted, you are apparently desirous of adopting some workable measure whereby the various counties may be advised, before allowing to the officer his submitted "expenses," as to the amounts for which they may expect reimbursement.

I see no reason why you could not, under the circumstances, prescribe an allowance for mileage which is deemed to be fair and reasonable, as well as a reasonable allowance for meals and lodging.

In answer to the questions presented by your inquiry, therefore, it is my opinion and you are advised that the auditor of state is required to allow reimbursement for a cost bill submitted under the provisions of Sections 2949.18 and 2949.19, Revised Code, in such amount as he finds reasonable and necessary. Where, in the opinion of the auditor, an excessive amount is listed on such cost bill as the expense of an officer in transporting a witness from a penal institution to the place of trial and return, he may allow reimbursement for only so much thereof as is considered to have been reasonably incurred.

Respectfully,

C. WILLIAM O'NEILL
Attorney General