

1642

EXPENDITURES FOR MEDICAL AND HOSPITAL SERVICE FOR CONVICTED PRISONERS WHILE AWAITING TRANSFER TO A PENAL INSTITUTION, SHOULD NOT BE INCLUDED IN COSTS OF THE PROSECUTION—§§2949.14 to 2949.18, R.C.

SYLLABUS:

Expenditures for medical and hospital services for convicted prisoners while awaiting transfer to a penal institution, should not be included as costs of the prosecution of such prisoners as provided in Section 2949.14, Revised Code, and should not be included as costs to be paid by the treasurer of state pursuant to Section 2949.18, Revised Code.

Columbus, Ohio, August 17, 1960

Hon. John S. Ballard, Prosecuting Attorney
Summit County, Akron, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“Since the State Auditor is only bound by opinions of the Attorney General, and since this question will probably have application in several Counties, your opinion regarding the following will be appreciated:

“‘Can all costs concerning the care of prisoners awaiting delivery to a penal institution be charged in the costs that are reimbursed by the State of Ohio? We particularly have in mind the costs of hospitals, professional medical services and ambulances.’”

Section 2949.14, Revised Code, reads as follows :

“Upon sentence of a person for a felony, the clerk of the court of common pleas shall make and certify under his hand and seal of the court, a complete itemized bill of the costs made in such prosecution, including the sum paid by the board of county commissioners, certified by the county auditor, for the arrest and return of the convict on the requisition of the governor, or on the request of the governor to the president of the United States. 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.”

Section 2949.18, Revised Code, sets out the provisions whereby, in case execution against the property of the prisoner is totally unsatisfied, the warden of the prison to which the convicted felon has been sentenced is required to certify the date on which the prisoner was received and the fees for transportation, whereupon the auditor of state is required to audit such bill and fees and issue a warrant to the treasurer of state for the payment of the amount he finds to be correct. Under Section 2949.19, Revised Code, certification of costs of prosecution is provided for by the clerk of the court of common pleas to the auditor of state in case part of such costs remain unpaid after execution against the property of the prisoner.

It is to be noted that in none of the cited sections is there any mention of costs of hospital and medical services that might be provided for a convicted felon while awaiting transportation to a state penal institution. It must be regarded as significant on the other hand that Section 2949.14, *supra*, expressly provides that the money spent by the county for returning the prisoner to the state in extradition proceedings is to be included in costs of the prosecution, although one might consider such express provision superfluous.

In 14 Ohio Jurisprudence (2d), Costs, Section 67, page 74, it is stated :

“At common law, costs were not recoverable *eo nomine*, either in civil actions or in criminal prosecutions; *hence, their recovery in any criminal case depends wholly upon statutory provisions therefor.*” (Emphasis added)

In *State ex rel. Board of Commissioners of Gallia County v. Board of Commissioners of Meigs County*, 14 O.C.C. 26, 7 O.C.D. 351, it was held in the second paragraph of the syllabus :

“The word ‘costs’ has long had a legal signification, and in Ohio it covers only those expenditures in a suit which by law are taxable, and to be included in the judgment therein.”

It will also be noted that in addition to the costs of prosecution, noted above, the state pays the costs of transportation of guards and prisoners to the state institutions. In this regard, Section 2949.17, Revised Code, reads in part:

“* * * In order to reimburse the county for the expenses of transportation, the state shall pay ten cents a mile from the county seat to the state institution and return for the sheriff and each of the guards, and five cents a mile from the county seat to the state institution for each prisoner. The number of miles shall be computed by the usual route of travel.”

Also to be considered in connection with the question at hand is Chapter 341., Revised Code, pertaining to the duties of the sheriff as keeper of the county jail. Section 341.01, Revised Code, imposes upon the sheriff the duty “to govern and regulate the jail according to the rules and regulations prescribed by the court of common pleas.” Among such rules and regulations, included in Section 341.06, Revised Code, is Rule (E) which expressly provides for the employment of “medical or surgical aid, when necessary.”

Viewing the question purely from the standpoint of practical common sense, it is difficult to see how furnishing medical services to a prisoner in the county jail, under circumstances here considered, is different from furnishing such service to any person in jail. Further, providing medical aid to a prisoner while awaiting transfer to a state institution clearly has no connection with the prosecution of such prisoner, for the simple reason that at that point, the task of the prosecution has been completed.

Summarizing, and in specific answer to your question, it is my opinion that expenditures for medical and hospital services for convicted prisoners while awaiting transfer to a penal institution, should not be included as costs of the prosecution of such prisoners as provided in Section 2949.14, Revised Code, and should not be included as costs to be paid by the treasurer of state pursuant to Section 2949.18, Revised Code.

Respectfully,
MARK MCELROY
Attorney General