



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

June 23, 1975

ATTORNEY GENERAL OPINION NO. 75-253

Mr. T. A. Blaser
Office of the Marshall County Attorney
1017 Broadway
Marysville, Kansas 66508

Dear Mr. Blaser:

Your recent letter inquires whether K.S.A. 20-815 authorizes the county to obtain reimbursement from an indigent misdemeanor defendant for funds expended from the county treasury to provide counsel to the defendant. In our opinion, the question must be answered negatively.

This statute provides in pertinent part:

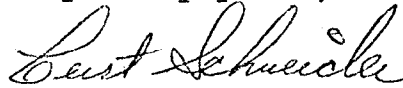
"Judgments of the county court shall be a lien upon the real estate of the judgment debtor from the date the judgment is rendered in the like manner and to the same extent as judgments of the district court."

The question you raise necessarily assumes that the county court could assess the costs incurred in providing for counsel's services as a judgment against the defendant. Such a practice would seem to violate the well-established jurisprudential doctrine that attorney's fees may not be assessed as costs in any judicial proceeding unless specifically so authorized by statute. This long standing legal precept represents the law of this state, Opin. Atty. Gen. No. 75-9 (copy attached hereto), as well as that followed in the federal courts. See Alyeska Pipeline Service Co. v. The Wilderness Society, U.S., 43 U.S.L.W. 4561 (May 13, 1975). Since K.S.A. 20-815 is facially silent on the question of the assessment of attorney's fees as costs in an action in county court, and indeed, does not seem to have contemplated such an eventuality, it is clear that the statute does not provide authority for the county to recoup the legal expenses incurred on behalf of an indigent defendant.

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Although we certainly agree with your observation that a significant financial burden is imposed upon the county treasury in performing the constitutional duty of supplying criminal defendants with publicly funded legal representation, we are constrained in light of accepted legal principles to conclude that the subject of reimbursement must be specifically authorized by statute and must await the future action of the legislature.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Curt Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:RMT:en
Enc.