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March 21, 1979

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ATTORNEY GENERAL OPINION NO. 79- 37

Mr. Elmer Jones
Chairman
Dickinson County Commission
325 Broadway
Abilene, Kansas 67410

Re: Criminal Procedure -- Costs In Criminal Cases --
Liability for Costs.

Synopsis: The expense involved in the preparation of a transcript required by K.S.A. 22-3210(5) is properly a part of the costs of the criminal proceeding.

When the defendant in a criminal proceeding is convicted by a plea of guilty or nolo contendere the defendant is responsible for payment of the costs of the proceeding. In the event that the defendant is unable to pay the costs, the county is secondarily liable and upon payment holds a judgment against the defendant.

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Dear Mr. Jones:

You inquire as to who is liable for the expense incurred in the preparation of the transcript in a criminal proceeding when the defendant enters a plea of guilty or nolo contendere.

K.S.A 22-3210 provides in part:

"(5) In felony cases the defendant must appear and plea personally and a record of all proceedings at the plea and entry of judgment thereon shall be made and a transcript thereof shall be prepared and filed with the other papers in the case."

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This statutory provision clearly indicates that the transcript preparation is mandatory in felony cases and directs that the transcript be made a part of the record. Unlike the provisions of K.S.A. 22-2904 (transcript of preliminary hearing) and K.S.A. 1978 Supp. 22-4509 (transcript for purposes of appeal) in which the transcript is prepared only upon request of one of the parties, the transcript provision of K.S.A. 22-3210(5) is mandatory. For that reason the expense incurred in transcript preparation under this latter statute is properly a part of the costs of the criminal proceeding. The items which may be included in the costs of a criminal proceeding are stated in K.S.A. 1978 Supp. 28-172a which provides:

"All other fees and expenses to be assessed as additional court costs shall be approved by the court, unless specifically fixed by statute. Such additional fees shall include, but are not limited to, fees for service of process outside the state, witness fees, fees for transcripts and depositions" (Emphasis supplied.)

The fees for transcripts are determined by the fixed transcript rate set out in the Rules of the State Board of Examiners of Court Reporters as approved by the Supreme Court of Kansas. These rules are published in K.S.A. 20-915 and 20-916.

Having determined the nature of the expense, it is necessary to consider who is liable for the expense. K.S.A. 1978 Supp. 22-3801 provides:

"(1) When the defendant in a criminal case is acquitted or the case is dismissed the costs incurred on the part of both the prosecution and defense shall be taxed against the county in which the prosecution was instituted. If the defendant is convicted the court costs shall be taxed against the defendant. If the defendant is unable to pay the costs taxed against the defendant, they shall be paid by the county except for that portion of the docket fee which is to be paid to the county general fund for the services of the clerk of the district court and sheriff. In all cases jury fees shall be paid by the county.

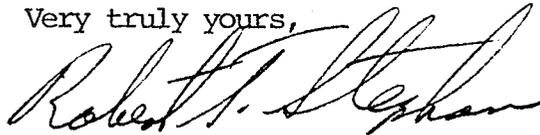
"(2) When a defendant has been convicted and costs have been taxed against the defendant, the payment of such costs by the county shall not relieve the defendant of liability for payment of costs, including the full docket fee. The costs taxed against the defendant shall be and remain a judgment against the defendant which may be enforced as judgments for payment of money in civil cases. It shall be the duty of the clerk of the court to issue execution for unpaid fines and costs at least once each year." (Emphasis supplied.)

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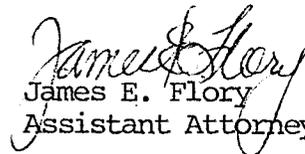
Since a defendant who enters a plea of guilty or nolo contendere in a felony proceeding is, if approved and accepted by the Court, "convicted" within the meaning of the foregoing statute, the defendant would be primarily liable for the transcript preparation expense accrued pursuant to K.S.A. 22-3210. In the event that the defendant is unable to pay the costs, the county is secondarily liable and upon payment holds a judgment against the defendant.

For these reasons it is our opinion that the expense of preparing the transcript of a felony proceeding wherein the defendant enters a plea of guilty or nolo contendere is properly includable in the costs of the criminal proceeding. These costs shall be taxed against the defendant, and if the defendant is unable to pay the costs they shall be paid by the county.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



James E. Flory
Assistant Attorney General

RTS:TDH:JEF:may