

COURTS: Sheriff's service of process fees in dismissed state criminal cases. Iowa Code §§ 331.424(1)(a)(6), 602.1302, 602.1303, 602.11101 and 815.1 (2014). There is no statutory provision for state payment of sheriff's fees for service of subpoenas and other process in state criminal cases where a dismissal is entered or defendant is acquitted; however, Iowa Code section 331.424(1)(a)(6) provides a potential funding source for payment of these fees by a county. (Miller to Patton, 9-5-2014) #14-9-1

September 5, 2014

Mr. Dave Patton
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Dear Mr. Patton:

You have requested an opinion from this office to determine the party responsible for payment of sheriff's fees incurred in serving trial subpoenas, court-ordered show cause notices in contempt actions, and notices for hearing in probation violations where these actions are brought under state criminal law and the action is ultimately dismissed with court costs assessed to the state. You have included a State Court Administration office directive dated July 20, 2011, instructing county clerks of court that sheriffs' subpoena service fees in criminal cases where costs have been taxed to the state shall not be paid from court funds, but rather should be "zeroed out" from the Iowa Court Information System.

As addressed in *State v. McKinney*, 756 N.W.2d 678 (Iowa 2008), the legislature reorganized the judicial system in 1983 to shift funding for portions of the court system from the county to the state, and generally placing the responsibility for the cost of prosecutions under state law with the state, and for costs of prosecutions of city or county ordinance crimes to the city or county. *McKinney*, at 680-82 (discussing provisions of the court reorganization legislation contained in 1983 Iowa Acts ch. 186). *McKinney* sought to resolve an ambiguity regarding the party responsible to pay fees for a material witness held in custody regarding a state criminal charge. Iowa Code section 815.6 provides a fee to material witnesses held in criminal cases, but does not specify who pays these fees. In *McKinney*, the Iowa Supreme Court reviewed several sections of the Code that specifically provide for state payment of witness fees in state law prosecutions - but do not specifically exclude material witness fees - with other provisions requiring counties and cities to pay witness fees in criminal cases under local ordinances. *Id.* at 681-82. The Court in *McKinney* found a general legislative intent for the state to pay costs in state law criminal actions and for the city or county to pay such costs in local ordinance actions. The Court cited to this general legislative intent and found that several statutes providing state payment of prosecution witness fees in state law criminal

cases required state payment of material witness fees arising from state law prosecutions. *McKinney* at 682.

After review of the *McKinney* case and the prosecution cost statutes cited therein, we have concluded that the sheriff's fees for costs of service of subpoenas and for service of notice of probation violations and show cause hearings in criminal cases brought under state law are not payable by the state. We reach this conclusion by careful analysis of the scope of the cost provisions in these statutes and the funding mechanisms created for payment of these costs.

Costs provisions

Review of the following Code sections, also considered by the Iowa Supreme Court in *McKinney*, reveals that these statutes narrowly fix responsibility for costs payable by the state in state law prosecutions to witness fees, jury fees and mileage. These statutes similarly require cities and counties to pay witness fees and mileage in local ordinance prosecutions but also fix city and county responsibility for the broader categories of court fees, court costs, and district court clerk services in local ordinance violations. *See* excerpts from Iowa Code §§ 602.1302, 602.1303(7), 602.11101, and 815.13 below. In addition, counties are responsible for deposition and transcript costs in all criminal cases- whether under local ordinance or state law. *See* excerpts from and section 815.13, below.

State-paid expenses in state law cases

the state shall assume responsibility for the costs of jury fees and mileage... and ...the state shall assume the responsibility for and costs of prosecution witness fees and other witness fees and mileage assessed against the prosecution in criminal actions prosecuted under state law as provided in sections 622.69 and 622.72. (Emphasis added.)

Iowa Code § 602.11101 (2014).

the state shall pay the witness fees and mileage in cases prosecuted under state law (where the defendant is found not guilty or the case is dismissed). (Emphasis added.)

Iowa Code § 815.13 (2014).

A revolving fund is created in the state treasury for the payment of jury and witness fees, mileage, costs related to summoning jurors by the judicial branch, and attorney fees paid by the state public defender for

counsel appointed pursuant to section 600A.6A. The judicial branch shall deposit any reimbursements to the state for the payment of jury and witness fees and mileage in the revolving fund. (Emphasis added.)

Iowa Code § 602.1302(3).

City or county-paid expenses in local ordinance cases

A county or city shall pay the costs of its depositions and transcripts in criminal actions prosecuted by that county or city and shall pay the court fees and costs provided by law in criminal actions prosecuted by that county or city under county or city ordinance. A county or city shall pay witness fees and mileage in trials of criminal actions prosecuted by the county or city under county or city ordinance. (Emphasis added.)

Iowa Code § 602.1303(7) (2014).

The county or city which has the duty to prosecute a criminal action shall pay the costs of depositions taken on behalf of the prosecution, the costs of transcripts requested by the prosecution, and in criminal actions prosecuted by the county or city under county or city ordinance the fees that are payable to the clerk of the district court for services rendered and the court costs taxed in connection with the trial of the action or appeals from the judgment. The county or city shall pay witness fees and mileage in trials of criminal actions prosecuted by the county or city under county or city ordinance. These fees and costs are recoverable by the county or city from the defendant unless the defendant is found not guilty or the action is dismissed, in which case the state shall pay the witness fees and mileage in cases prosecuted under state law. (Emphasis added.)

Iowa Code § 815.13 (2014).

The Iowa Supreme Court in *McKinney* required the state to pay material witness fees involved in a state criminal law offense - just as the state would be responsible for any other prosecution witness fee in a state crime case. *McKinney* at 682. *McKinney* did not address payment of sheriff's statutory fees to serve subpoenas or other process service costs in state criminal cases - it was a witness fee case. Note that provisions relating to state payment for state offenses above do not provide for state payment of court costs generally or mention service of process fees, but only list state responsibility for jury and witness fees and mileage. See Iowa Code §§ 602.1302, 602.11101, and 815.13. Cities and counties are not similarly limited to payment of witness and jury fees in local ordinance prosecutions, but are also responsible for court costs and court

expenses in these cases. Iowa Code §§ 602.1303(7) and 815.13. Our review of the Code did not reveal a provision requiring payment by the state of sheriff's service of process fees in a state-criminal law prosecution.

Funding mechanisms

The funding mechanisms provided by the Code for criminal prosecution expenses are consistent with state payment limited to witness and jury fees and mileage in state law prosecutions and payment of broader court costs by counties in local ordinance cases. Iowa Code section 602.1302(3) creates a revolving fund in the state treasury to pay the narrow categories of "jury and witness fees, mileage, and costs related to summoning jurors." Iowa Code § 602.1302 does not contain a broad provision for payment of other costs or fees regarding state statute criminal actions and no provision to pay sheriff's service of process fees. This statute also provides that any reimbursements received by the judiciary for jury and witness fees and mileage shall be deposited back into this fund. *Id.* We have not located a statute that specifies a state fund for payment of criminal litigation costs such as sheriff's process service fees in state-law prosecutions.

There is, however, a statute that creates a funding mechanism that could apply to sheriff's service of process service fees in failed state criminal law cases. Iowa Code section 331.424(1)(a)(6) (2014) provides a supplemental levy in the county budget allowing counties to "...pay court costs where a prosecution fails, or the county is unable to collect costs from the person liable." This provision contains no limitation restricting its application to prosecutions brought under county ordinance. Iowa Code section 331.424(1)(a)(6) was amended in 1984 to include a specific provision that allowed payment from this levy for costs of prosecution under Iowa Code section 815.13. 1984 Iowa Acts ch. 1178, § 7. This amendment did not repeal or alter the original general provision allowing payment of court costs for failed prosecutions nor does it place any limitation on its use in state criminal law cases. This would appear to allow use of the county levy to cover prosecution costs, such as sheriff's process service fees, not recoverable from the defendant or other sources upon acquittal or dismissal of charges.

Finally, we have previously opined that a sheriff could tax fees as court costs for subpoenas and other process served in a criminal case brought under a local ordinance. 1988 Op. Att'y Gen. 37(#87-4-5). There we opined the sheriff could present a bill to the clerk of court for payment of these fees, which would be collected from the city or county responsible for the prosecution, and recouped by that entity from the defendant as costs upon conviction under Iowa Code section 815.13. It is our opinion that the sheriff could not seek payment from the state for such costs in a state statute prosecution. Iowa Code section 815.13 places a duty upon a city or county in a case under local ordinance to, "pay...the fees that are payable to the clerk of the district court for services rendered and court costs taxed in connection of the trial in the action." Iowa Code section

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Page 5

602.8106(1)(a) similarly requires a county or city to pay docket and filing fees to the district court clerk in local ordinance cases and allows recoupment from the defendant if convicted. There is no parallel provision in Iowa Code section 815.13 or elsewhere for the State of Iowa to front such costs in a case brought under state statute. Rather, the state's duty under Iowa Code section 815.13 is limited to, "pay the witness fees and mileage" in state law cases where the action is dismissed or defendant is acquitted. Under Iowa Code section 602.8106(1)(a), the state is merely required to waive fees "payable by the county to the clerk of the district court for services rendered in criminal actions prosecuted under state law and court costs taxed in connection with the trial of those actions".

Therefore, it is our conclusion that the sheriff's fees for service of subpoenas and other process in state criminal cases are not recoverable from the state where a dismissal is entered or defendant is acquitted.

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