

OFFICE OF THE ATTORNEY GENERAL
STATE OF NORTH DAKOTA

OPINION NO. 81-140

Date issued: December 24, 1981

Requested by: James T. Odegard
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--QUESTION PRESENTED--

Whether in felony prosecutions, the costs of prosecution are the responsibility of the state.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that the costs in a felony prosecution, incurred once the case has been transferred to district court, are the responsibility of the state.

--ANALYSIS--

The 1981 Legislative Assembly enacted a comprehensive law revising the judicial system and the method by which certain costs were to be paid. Some of the amendments made by the 1981 Legislative Session are as follows.

Section 27-09.1-14 of the North Dakota Century Code, dealing with the mileage and compensation of jurors, states in part:

. . . The mileage and compensation of jurors shall be paid by the state for jurors at sessions of the district court and paid by the county for jurors at sessions of the county court. Jurors at coroner's inquests shall be paid by the county.

Section 29-22-02, N.D.C.C., concerning the custody of jurors, states in part:

. . . Such officer or officers shall furnish food and other necessities to the jurors, at the expense of the county for county court and at the expense of the state for district court, as directed by the court, . . .

Section 31-01-16, N.D.C.C., concerning the compensation and mileage and travel expenses of witnesses, states in part:

. . . In all criminal cases such witness fees and expenses on the part of the state shall be paid out of the county treasury of the proper county except that district court witness fees and expenses shall be paid by the state. . . .

Section 31-01-18, N.D.C.C., dealing with the expenses of witnesses in a criminal action, states in part:

. . . the judge, by a written order, may direct the county treasurer in county court cases to pay the witness a reasonable sum to be specified in the order for the necessary expenses of his attendance. Upon the production of the order or a certified copy thereof, the county treasurer must pay the witness the sum specified therein out of the county treasury. Where the order is issued by the district court the witness shall be paid by the state.

Section 31-01-19, N.D.C.C., dealing with witnesses for indigent defendants, states in part:

. . . such court shall make an order, to be entered in the minutes, that such witnesses as may be deemed reasonable, naming them, be subpoenaed to attend at such trial at the expense of the county or the state, whichever is liable to pay the costs of the prosecution of such action, and such witnesses shall be paid accordingly.

Section 29-07-01.1, N.D.C.C., dealing with the payment of expenses for defense of indigents, states in part:

. . . Expenses necessary for the adequate defense of a needy person, when approved by the judge, shall be paid by the county wherein the alleged offense took place if the action is prosecuted in county court, and by the state if the action is prosecuted in district court. The state shall also pay the defense expenses in any felony action prosecuted in county court pursuant to subsection 7 of section 27-07.1-17.

In a felony prosecution, the offense will normally be charged initially into county court. After a preliminary hearing is held or waived, the county court ceases to have jurisdiction over the case and the jurisdiction then lies with the district court.

After a defendant has been bound over to district court, the expenses, as provided by law, incurred from that point on are paid by the state.

Therefore, any expenses incurred prior to the bind over into district court are paid by the county and expenses, as provided by law, incurred after that point are paid by the state.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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