

Costs in Civil Actions—Liability of County for Costs in Actions Brought in Forma Pauperis.

A county is not liable for any part of the costs incurred by plaintiff suing in forma pauperis under Section 7176 of the Revised Codes of 1907.

Homer A. Hoover, Esq.,
County Attorney,
Circle, Montana.

My dear Mr. Hoover:

I have your letter requesting an opinion as to whether the county becomes liable for the costs in civil actions brought in forma pauperis by plaintiffs under Section 7176, Revised Codes of 1907.

Section 7176, above, reads as follows:

"Any person may commence and prosecute an action in any of the courts of this state who will file an affidavit stating that he has a good cause of action, that he is unable to pay the costs, or procure security to secure the same; then it is hereby made the duty of the officers of the courts to issue all writs and serve the same and perform all services in the action, without demanding or receiving their fees in advance."

The purpose of the above section is to allow poor persons, who have a good cause of action, to avail themselves of the machinery of the courts of justice for the purpose of the prosecution of such actions, without being compelled to pay the costs and fees thereof in advance. It is made the duty of all officers of the court, which includes judges, justices of the peace, clerks of court, sheriffs and constables, to issue and serve writs and perform all services in the action without demanding or receiving fees in advance. This section was not intended to, and does not relieve a pauper plaintiff from liability for costs in case he is defeated in the action. (See 15 C. J. 239, Sec. 592.) It merely allows him to sue on his cause of action and pay his costs when judgment is recovered and collected, instead of paying the same in advance, as is required of other plaintiffs.

If he is defeated in the action, judgment must be entered against him for the costs, and the Clerk or Sheriff should proceed under the provisions of Section 7179, Revised Codes of 1907, to collect the costs. The statutes, in listing what are proper charges against the county, do not include costs in forma pauperis actions, and statutes providing for suits in forma pauperis should be strictly construed as against the applicant.

Zeimmer v. Schmalz, 1 N. Y. City Ct. 435;
Moore v. Cooley, 2 Hill (N. Y.) 412.

There is nothing in the law authorizing or requiring the county to pay such costs for the pauper plaintiff. Neither is there any obligation resting upon the attorney for a pauper plaintiff to pay the costs for his client, and if he does so, his right to reimbursement is from his client and not from the county.

It is my opinion that the county is not liable for any part of the costs incurred by plaintiff suing in forma pauperis under Section 7176, Revised Codes of 1907.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.