

Cost, Transfer of Cases. County, Liability Of. Change
of Place of Trial. Removal of Civil Cases, Costs. Change of
Venue, Civil Cases, Costs On.

Chapter 5 of the second extraordinary session of the Eighth

legislative assembly, enumerates what charges the county in which a civil action is tried may legally make against the county from which the action was removed, and this, in effect, includes all costs and expenses incurred by reason of such change of place of trial, but does not include the cost of summoning the jurors of a regular panel, unless same was occasioned by reason of the removal of such case.

Helena, Montana, March 12, 1908.

Hon. S. V. Stewart,
County Attorney,
Virginia City, Montana.

Dear Sir:—

I am in receipt of your favor of the 3rd inst., in which you submit for the consideration of this office the question:

What charges can the county to which a civil action is removed for trial, and in which it is tried, make against the county from which the case was removed?

Chapter 5 of the second extraordinary session of the Eighth legislative assembly adds to the Political Code a section numbered 621, which reads as follows:

“Section 621. In case of a change of the place of trial from one county to another as provided for in Section 615 of this code, the county in which the action or proceeding is tried shall recover from the county in which the action was commenced all additional costs or expense that may have been incurred by such county by reason of extra jurors or bailiff's fees, or other court expenses incurred by such county by reason of the hearing or trial of said action, motion or proceeding; such extra costs shall be allowed by the court, and the clerk of the court of such county shall certify the same to the board of county commissioners of the county in which said action, motion or proceeding was commenced, and said board shall allow and cause the same to be paid.”

This section is quite explicit in its enumeration of costs and expenses, and in effect provides that the county where the trial is had shall recover from the other county all costs and expenses incurred by reason of the change of place of trial. This does not include expense incurred in serving the regular panel of the jury, for such expenses are not made necessary by reason of the removal of the case. All expenses of a special venire made necessary by such removal would be proper charges. Bailiffs fees and mileage, meals served to jurors, and sheriff's expenses, are all proper charges if occasioned by reason of such removal, but otherwise they are not proper charges. The fees of jurors who are sitting in the trial of a case, and the fees of other jurors on the regular panel, who would be entitled to compensation under Section 4646, Political Code, as amended by Chapter XLVIII, Laws 1903, are also proper charges. All of these questions, however,

must be determined from the evidence; hence, are questions of fact as to whether such expense was occasioned by reason of the change of place of trial.

The certificate of the clerk of the court to the cost bill is of no binding force or effect upon the county commissioners as a judicial determination, and if the commissioners believe that the bill is exorbitant, or not supported by the evidence, they may simply direct a warrant to be drawn for the amount which they deem proper.

This case is very similar to that of State ex rel Cascade County vs. Lewis and Clark County, 34 Mont. 351. That was a criminal case and demand for reimbursement was made under the provisions of Section 4683, Political Code, but the principle involved relative to the liability of the county, and as to the method of procedure, are practically the same.

Very truly yours,

ALBERT J. GALEN,

Attorney General.