

State Prisoners, Prosecution Of. Costs, Prosecuting Prisoner in State Prison. Coroner's Inquest in State Prison, Costs Of.

The expense of prosecuting a prisoner for an offense committed in the state prison must be audited by the state board of examiners and paid by the state, and the expense of a coroner's inquest which was held principally for the purpose of securing evidence to be used at the trial of the cause should be included in the costs to be paid by the state.

Helena, Montana, July 23, 1908.

State Board of Examiners,
Helena, Montana.

Gentlemen:—

I am in receipt of your communication of the 18th inst. submitting for the consideration of this office a bill presented by Powell county for expense incurred in the prosecution of certain prisoners in the state prison. We cannot pass upon the correctness of the bill as to amount, etc., but only as to the liability of the state for expense incurred in the prosecution of prisoners confined in the state prison.

Section 226 of the Penal Code provides that "whenever a prisoner in the state penitentiary shall be tried for any crime committed therein, the county clerk of the county where such trial is had shall make statement of all the costs incurred by the county for the trial of said case, * * * which statement shall be sent to the board of state prison commissioners for their approval; and after such approval, said board must cause the amount of such costs to be paid out of the money appropriated for the support of the state prison, and the county treasurer of the county where such trial was had. Under this section there is no question as to the liability of the state for the payment of the expense incurred in the prosecution of the prisoners confined in the state prison, and the records show that the defendants William Hayes, C. B. Young, Oram Stevens, and George Rock, were prisoners confined in the state prison, and were prosecuted in Powell county for a crime committed in said state prison. Hence the state is liable to the county of Powell for the costs incurred in the county in the prosecution of said parties.

The statement of expenses incurred by Powell county, which statement is properly certified by the county clerk and by the district judge, contains a statement of expenses incurred by the coroner in holding an inquest over the body of John Robinson, whom the above named defendants were accused of murdering, and for which offense they were prosecuted. An inquest is held by the county coroner under the authority of Section 2790, Penal Code. The coroner is not a judicial officer, and proceedings had by him at an inquest do not constitute a trial.

In re Sly, 76 Pac. 766.

The expenses for which the state is liable to the county are only those which properly come within the provisions of said Section 226,

Penal Code, and the expense incurred by the coroner in holding an inquest do not come within the provisions of said section and hence are not legal charges against the state.

Said Section 226, however, contains the clause: "All the costs incurred by the county for the trial of such cause." If, therefore, the expense incurred as set out in the statement under the head of "Expense of Coroner" were costs properly incurred by the county "for the trial of said cause" they should be allowed and paid by the state notwithstanding they are denominated in the statement submitted as expenses of the coroner. And this presents a question of fact for the consideration of the board.

I am informed that the facts briefly stated are that a conspiracy was entered into by a considerable number of the prisoners confined in the state prison, and having for its object the escape by such prisoners from the state prison; that in furtherance of this purpose an assault was made upon the persons in charge of said state prison; that John Robinson, deputy warden, was killed, and Frank Conley, warden, was seriously injured. This conspiracy, and the results of its attempted consummation, were of such a serious nature as to demand immediate investigation in order to ascertain its cause and extent and the necessity for changing conditions existing or for taking additional precautions for the safe-keeping of the convicts. However, no such investigation was made by the state prison board, for the reason that an inquest was held and it was immediately understood that all investigation necessary should be made at the time of and as a part of said inquest. The inquest therefore served not only the purpose of an inquest proper but as an extended investigation for the information of the state prison board, and copies of the evidence there taken and of proceedings there had, were by said coroner submitted to said state prison board. The expenses of such inquest were therefore greatly increased, if not wholly occasioned by the investigation had for the information of the state prison board.

Under these facts and such other facts as the board may be able to obtain it is within the discretion of the state prison board to allow or disallow that part of the claim denominated "Expenses of Coroner" in holding the inquest over the body of John Robinson.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.