

**Bail Bonds, Fee for Not County Charge. County Charge,
Fee for Bail Bond Not. Justice of the Peace, Fee of.**

If a defendant in custody charged with crime desires bail, the justice of the peace is entitled to charge and collect from the defendant one dollar for the services performed by the justice. The rule of law governing in such cases appears to be that the county is not liable for costs made by a defendant.

September 22, 1913.

Hon. Justin M. Smith,
County Attorney,
Bozeman, Montana.

Dear Sir:

Referring to your recent communication to this office, wherein you state that justices of the peace in criminal actions tried in your county, insist upon charging one dollar for taking, filing and approving bail bonds, including justification, and you inquire as to whether it be the intention that a justice of the peace shall be permitted to charge the defendant one dollar when defendant files his bail bond, beg to advise as follows:

Sec. 3176, Revised Codes, provides generally for fees which may be charged by justices of the peace, and in criminal actions provision is made that he shall be paid the amounts enumerated in the section for all services, both as a committing magistrate and as a justice. In addition to these, provision is also made as follows:

“For taking, filing and approving bail bonds, including justification, one dollar.”

This section, save in the single instance when a search warrant is issued, does not specify by whom the enumerated fees shall be paid. I think it to be a well established principle of law that a county is never liable for costs or fees in the absence of statutory authorization. (11 Cyc. 282.) It becomes necessary, therefore, to examine the statutes to ascertain whether or not the county has been made liable for the payment of any of the enumerated fees which a justice is entitled to charge in criminal actions and proceedings. Sec. 3199, Revised Codes, enumerates what are county charges. Subdiv. 6 reads as follows:

“All charges and accounts for service rendered by any justice of the peace for services in the examination or trial of persons charged with crime as provided for by law.”

It will be observed that the language of this section fixes the liability of the county for all services in the examination or trial of persons charged with crime. That the taking, filing and approving of bail bonds, including the justification, is neither a part of the examination or trial of a cause or proceeding in justices' courts is made manifest by the language of Sec. 3176, supra, for special provision is therein made for all services of a justice of the peace or committing magistrate when acting as such. It follows, therefore, that the charge of one dollar for taking, filing and approving bail bonds,

including justification, is not a proper charge against the county, for the very obvious reason that the legislature has not declared it to be such. The right of a defendant charged with crime to bail is constitutional. It is a right of which a defendant may avail himself or not at pleasure. Bail has been defined to be

"A delivery or bailment of a person to his surety, upon their giving sufficient security for his appearance, he being supposed to continue in their friendly custody instead of going to jail."

In re. Siedert, 58 Pac. 971 (Kan.).

Technically, therefore, a person charged with crime after his arrest is constantly in custody. In the one instance he is confined in a public jail; in the other, when bailed, he is in the custody of his friends or sureties, and I am of the opinion that if a person is arrested, charged with crime, and he desires to give bail, that the expenses incident to securing it are to be borne by him in the absence of an express statutory provision, which the charge elsewhere, because this is a service rendered by the justice, peculiarly for the defendant, and not for the prosecution, and not in the trial or examination of a case. The rule of law governing in such cases appears to be that statutes imposing payment of costs on a county do not render it liable for costs made by the defendant. (11 Cyc. 283.) At common law no costs whatever were allowed a defendant. (Huntington Co. v. Commonwealth, 72 Pa. St. 80) The rule, therefore, is that in no instance is a defendant in a criminal action or proceeding entitled to costs, except by statutory enactment, and when he claims costs expended by him in his defense, or that he is entitled to certain services without the payment of costs, it is indispensable that he be able to point to a statute which entitles him to receive what he claims.

Franklin County v. Conrad, 36 Pa. St. 317.

Board of County Commissioners v. Wilson, 34 Pac. 265 (Colo.).

My conclusion is that if a defendant in custody, charged with crime, desires bail, the justice of the peace is entitled to charge him, and the defendant must pay, one dollar for the services performed by the justice as indicated by the statute.

Yours very truly,

D. M. KELLY,
Attorney General.