

The County Attorney has no authority to appear for the County or State in cases pending outside of his own County unless he has been authorized to do by the Board of County Commissioners of his own County, and should he do so without the direction or consent of the Board he cannot recover compensation there for nor for expense incurred by him in so doing.

Third : Is the County responsible for costs in criminal cases where a conviction is not secured?

"Costs are unknown to the common law. They are given only by Statute and may be charged or taken away at will off the Legislature." State vs Campbell 19 Kan. 483

It therefore follows that the County is only liable for such costs as are provided by Statute, under the statute as it existed prior to 1868 it was prescribed that the costs in criminal actions should be paid by the County in which the offence was committed when the defendant was convicted and unable to pay them, and when the defendant was acquitted the costs were to be paid by the County unless the prosecutor was adjudged to pay them. Comp. Laws 1862, P. 281.

In the revision of 1868 the section relating to costs in cases of acquittal was omitted and no section of like import was inserted in its place. State vs Campbell 19 Kan. 484.

Sections 85 and 86 of Chap. 30. Statutes of 1897, were enacted, the first section in 1881 and the second section in 1889, and are the only statutes fixing the liability of the County for costs in criminal cases except possibly in such cases as judgment may be expressly rendered against the State for costs.

It follows from said paragraph 86 that the County is liable for costs in cases of acquittal in the same manner and to the same extent as in cases of conviction whenever the County Attorney shall certify in writing upon the fee bill in any case that it was proper that such case should have been instituted and that consultation with him prior thereto was impracticable or that the case was instituted under his instruction and advice. In all such cases the legal fees of the Sheriff, Clerk, Constables, Justices of the Peace, witnesses for the State and jurors shall be paid by the County in which the prosecution is instituted.

"Unless some specific authority can be shown for requiring the County to pay costs or expenses the County cannot be required to pay them" Commissioners of Osborn County vs Horn 23 Kan. 179"

The foregoing opinion is respectfully submitted

(SIGNED) Alford & Clingman

June -17-1901

ON MOTION BOARD ADJOURNED TO Aug-24-1901

LAWRENCE KANSAS AUGUST-24-1901

The Honorable of County Commissioners met pursuant to adjournment those present were A.J. Farnell, Ch J.C. Watts, B.F. Hoskins and Co Clerk (A. Flory)  
Minutes of former meetings read and approved  
Minutes of former meetings read and approved to date

On motion Board adjourned

Attest

*Geo A Flory*  
Co Clerk