

PROBATE COURT:
INDIGENT INSANE:
COUNTY BUDGET:

County is liable for fees accruing in Probate Court in indigent insane hearings. Such fees, when not included in county budget, should be paid out of class 5 or class 6 of such budget.

November 13, 1947

FILED

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Honorable Joe W. Collins
Prosecuting Attorney
Cedar County
Stockton, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting an official opinion of this department and reading as follows:

"Our Probate Judge has filed a certificate that the records in his office show \$82.00 fees have accrued in indigent insane cases since January 1, 1947 and that said fees are due his office and properly chargeable to Cedar County, Missouri, and requests payment of said fees.

"Would you please advise if these fees are properly chargeable against Cedar County.

"The County Budget for this year did not provide for payment of these fees. If they are properly chargeable against Cedar County, may they be paid although not budgeted for, and if paid, out of what class of expenditures under our budget law."

We are enclosing official opinions of this department rendered under date of January 16, 1947, to Gordon J. Massey, and February 3, 1947, to Emory C. Medlin, which we believe answer your question with regard to the payment of fees in the Probate Court in indigent insane cases since January 1, 1947.

The fact that the County Court failed to include in its budget an item for such payment does not relieve the county of its duty to make such payment. In the case of Gill v. Buchanan

County, 142 S. W. 665, the Supreme Court of Missouri, in discussing the question of whether or not Buchanan County was liable to pay a county judge his full salary, even though not budgeted by the county court, said, l. c. 668:

"To properly accomplish that purpose, mandatory obligations imposed by the Legislature and other essential charges should be first budgeted, and then any balance may be appropriated for other purposes as to which there is discretionary power. Failure to budget funds for the full amount of salaries due officers of the county, under the applicable law, which the county court must obey, cannot bar the right to be paid the balance. * * *"

Under the holding of this case it is clear that the failure to budget an expense for which the county is liable does not relieve the county of its duty to make such payment.

The payment of the fees which have accrued in the indigent insane cases should be made out of funds provided in class 5 or class 6 of the county budget.

CONCLUSION

It is the opinion of this department that Cedar County, Missouri, is liable for the payment of the fees which have accrued in the Probate Court in indigent insane cases since January 1, 1947. Payment of such fees should be made out of class 5 or class 6 funds in the county budget.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

CBB:HR