

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 82-309
	:	
of	:	<u>MAY 18, 1982</u>
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GEORGE DEUKMEJIAN	:	
Attorney General	:	
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Anthony S. Da Vigo	:	
Deputy Attorney General	:	
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THE HONORABLE PAUL R. DePASQUALE, DISTRICT ATTORNEY,
COUNTY OF LASSEN, has requested an opinion on the following question:

Is reimbursement for a proportional allowance for the salary of a district attorney who has personally engaged in an activity under Penal Code section 4700 authorized under that section?

CONCLUSION

Reimbursement for a proportional allowance for the salary of a district attorney who has personally engaged in an activity under Penal Code section 4700 is authorized under that section.

ANALYSIS

In 53 Ops.Cal.Atty.Gen. 180 (1970) we considered the provisions of Penal Code section 4700 as it then appeared.¹ It was determined that reimbursement to the county for "all the costs incurred" for investigation and trial of a prison crime was limited to "added" costs directly attributable to the proceeding.

"It merits emphasis that every item of cost in an inmate proceeding must be confined to added costs incurred by reason of that proceeding. The Department of Corrections cannot be forced to bear the incidental expenses of operating the entire judicial system. Reimbursable costs only include those costs representing added county expense and effort. Thus, *that portion of the time spent by the staff of a district attorney or public defender allocable to a section 4700 proceeding is an example of a proper cost.* Added county costs of furnishing heat and light for the operation of the courts, under Government Code section 68073, is another example. These added expenses, however, do not justify a blanket percentage of county governmental costs to be reimbursed as overhead for a section 4700 proceeding. The applicable principle is expressed in 22 Ops.Cal.Atty.Gen. 209 (1953), where it concluded that a city need not reimburse a county under Government Code section 36903 for the expenses of maintaining a city prisoner in a county jail where the city prisoner was charged also with a violation of state law. In that situation, the violation of local ordinance did

¹ The section then provided:

"Whenever a trial is had of any person under any of the provisions of Section 4530 of this code, whenever a hearing is had on the return of a writ of habeas corpus prosecuted by or on behalf of any prisoner in the state prison, whenever a prisoner in the state prison is tried for any crime committed therein, or whenever a prisoner transferred to a county correctional facility pursuant to Section 2910 or to a community correctional center pursuant to Section 6253 is prosecuted for a crime committed in such institution or for escape, and whenever a trial or hearing is had on the question of the insanity of any such prisoner, the county clerk of the county where such trial or hearing is had must make out a statement of *all the costs incurred by the county for the investigation, and the preparation of the trial, and actual trial of such case, or of the hearing on the return of such writ, and all guarding and keeping of such prisoner, while away from the prison, the transportation of the prisoner to and from the prison (when such transportation was performed by the county), the costs of appeal, and of the execution of the sentence of such prisoner,* properly certified to by a judge of the superior court of such county, which statement must be sent to the Department of Corrections for its approval; and after such approval, said department must cause the amount of such costs to be paid out of the money appropriated for the support of the Department of Corrections, to the county treasurer of the county where such trial or hearing was had." (Emphasis added.)

not add to the cost of the prisoner's confinement. Consequently, in the present case expenses are not reimbursable where they are incurred in any event and thus do not represent expenses directly added to the county budget by the inmate proceeding." (*Id.*, at 182.) (Emphasis added.)

In subsequent opinions we expounded, by way of clarification, that the word "added" as used in 53 Ops.Cal.Atty.Gen. 180, *supra*, in effect meant "reasonably allocable and directly attributable." (56 Ops.Cal.Atty.Gen. 141, 143 (1973); 62 Ops.Cal.Atty.Gen. 372, 376 (1979).) In the latter opinion we further characterized the reference in 53 Ops.Cal.Atty.Gen. 180, *supra*, to "the time spent by the staff of a district attorney" as including the time spent by the district attorney. (62 Ops.Cal.Atty.Gen., *supra*, at 375.) Thus, it has been our considered view, which is again affirmed, that the salaries and expenses of a district attorney which were reasonably allocable and directly attributable to a proceeding referred to in section 4700 were examples of proper costs.

Penal Code section 4700 as amended by the Statutes of 1982, chapter 147, section 2, now provides:

".....

"(b) Whenever a trial is had of any person under any of the provisions of Section 4530, whenever a hearing is had on the return of a writ of habeas corpus prosecuted by or on behalf of any prisoner in the state prison, whenever a prisoner in the state prison is tried or a court hearing is held for any crime committed therein, or whenever a prisoner transferred to a county correctional facility pursuant to Section 2910 or to a community correctional center pursuant to Section 6253 is prosecuted for a crime committed in such institution or for escape, and whenever a trial or hearing is had on the question of the insanity of any such prisoner, *the district attorney incurring any costs in connection with such matter shall make out a statement of all the costs incurred* by that office for the investigation, and the preparation of the trial, pretrial hearing, and actual trial of such case or of the hearing on the return of such writ, expert witness fees, and all guarding and keeping of such prisoner, while away from the prison, the transportation of the prisoner to and from the prison (when such transportation was performed by the district attorney's office), the costs of appeal, and the execution of the sentence of such prisoner. The statement shall be sent to the Controller for reimbursement. *Full reimbursement shall be made to the district attorney for expenses incurred in prosecution and investigation.*

".....

"(d) Costs incurred by a county in investigating and evaluating cases referred by the Department of Corrections for prosecution shall be included in the compensation provided under this section whether or not the district attorney decides to commence a criminal action. Any such costs not incurred by the district attorney's office shall be submitted to that office and forwarded by the district attorney, along with the district attorney's statement of costs, to the Controller. The Controller shall reimburse the district attorney within 60 days from the date the District Attorney submitted the statement or provide a written statement as to the reasons for not making the reimbursement within the specific time."

"....." (Emphases added.)

The present inquiry is whether reimbursement for a proportional allowance for the salary of a district attorney² who has personally engaged in an activity under Penal Code section 4700, as amended, is authorized under that section. Subdivision (b) thereof expressly provides that the district attorney incurring *any* costs in connection with such a proceeding shall make out a statement of *all* the costs incurred, and that full reimbursement therefor shall be made. We find in this statutory language no basis whatever for changing our view that the terms "any" or "all" costs include those costs which are reasonably allocable and directly attributable to such proceedings. Based on this standard established in our earlier opinions, such costs would include a proportional allowance for the salary of district attorney who has personally engaged in the prosecution or other activity in connection with such a case.

It may be noted that in conjunction with the amendment of Penal Code section 4700, section 4703 was amended so as to restrict the authority of a district attorney to transfer such cases for prosecution to the Attorney General. (Stats. 1982, ch. 147, § 3.)³ It appears that the purpose of such amendatory legislation was not to transfer the fiscal burden attendant upon the actual prosecution of such cases from the state to the county but to obviate the necessity of extensive travel cost by the Attorney General. (Stats. 1982, ch. 147, § 5.)

It is concluded that reimbursement for a proportional allowance for the salary of a district attorney who has personally engaged in an activity under Penal Code section 4700 is authorized under that section.

² The salary of a district attorney is prescribed by the governing body of a county (Cal. Const., art. XI, § 1(b)) or specifically in accordance with a county charter (Cal. Const., art. XI, § 4(c)).

³ Concomitantly, Government Code section 12554 was repealed. (*Id.*, § 1.)