

1975 WL 28870 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 29, 1975

\*1 Mr. Ralph Hutchins  
Administrator  
Lexington County Jail  
Lexington, South Carolina 29072

Dear Mr. Hutchins:

Thank you for your letter of May 23, 1975. In that letter you ask the following: 'Is it constitutional to make the prisoner pay jail fees resulting from his incarceration, out of his own pocket?' Section 15-910, 1962 Code of Laws, puts the financial burden of housing prisoners upon the city with direct reference to persons arrested by municipal authorities, the relevant language is as follows:

If the offender be committed to jail it shall be done at the expense of the city or town.

It was held in [City of Greenville v. Pridmore](#), 162 S.C. 52, 160 S.E. 144 (1931) that the municipality is required to pay the expense of dieting and housing prisoners on the municipal chain gang.

The imposition of costs against a criminal defendant found guilty is subject to direct statutory provision therefor, as such costs were unknown at common law. [United States v. Gaines](#), 131 U.S. 169, 25 L.Ed. 733; 20 Am. Jur. 2d Costs § 100. As there is no statutory authorization for such costs, the common law rule must prevail and such costs are not allowed. Section 1-19, 1962 Code of Laws, as amended.

The above rationale would likewise apply to an innocent defendant. In addition, Mr. Justice Fortas, concurring in the case of [Giaccio v. Pennsylvania](#), 382 U.S. 399, 86 S.Ct. 518, 15 L.Ed. 2d 447 (1966), said:

In my opinion, the Due Process Clause of the Fourteenth Amendment does not permit a state to impose a penalty or costs upon a defendant whom the jury has found not guilty of any offense with which he has been charged. (p. 405 of 382 U.S.)

Therefore, I must conclude that a prisoner cannot be forced to pay jail fees resulting from his incarceration.

Sincerely,

Herman L. Moore  
Law Clerk

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