

April 30, 1997

OPINION NO. 97-024

The Honorable Dennis Watkins
Trumbull County Prosecuting Attorney
3rd Floor Administration Building
160 High Street N.W.
Warren, Ohio 44481-1092

Dear Prosecutor Watkins:

You have requested an opinion regarding the imposition of court costs against a county board. Specifically, you have asked whether the Trumbull County Court of Common Pleas, Domestic Relations/Juvenile Division, may order the Trumbull County Children Services Board to pay court costs for the filing of any actions in that court by the Board.¹ One of your assistants has informed us that you are primarily concerned with actions in which the Board files a complaint alleging that a particular child is delinquent, unruly, abused, neglected, or dependent, and actions in

¹ R.C. 2301.02 addresses the number of judges of the court of common pleas for each county, the time for the next election of the judges in the several counties, and the beginning of their terms. With respect to Trumbull County, the foregoing matters are specifically addressed in R.C. 2301.02(B). R.C. 2301.03 thereafter addresses the designation of those judges of a court of common pleas that are to exercise jurisdiction in domestic relations and juvenile cases. With respect to Trumbull County, R.C. 2301.03(J) provides that the judges of the court of common pleas whose terms begin on January 1, 1953, and January 2, 1977, and successors, "shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Trumbull county and shall be elected and designated as judges of the court of common pleas, division of domestic relations." The statute further provides, in pertinent part, that these same judges "shall have all the powers relating to juvenile courts, and all cases under Chapter 2151. of the Revised Code, [and] all parentage proceedings over which the juvenile court has jurisdiction." See R.C. 2151.011(A)(1) (as used in the Revised Code, "[j]uvenile court_ means the division of the court of common pleas or a juvenile court separately and independently created having jurisdiction under [R.C. Chapter 2151]"); R.C. 2151.07 ("[t]he juvenile court is a court of record and within the division of domestic relations or probate of the court of common pleas"); R.C. 2151.23 (jurisdiction of juvenile court).

which the Board seeks to obtain custody of such a child pursuant to an *ex parte* order issued by the court. *See* R.C. 2151.27(A) (any person having knowledge of a child who appears to be, *inter alia*, a delinquent, unruly, abused, neglected, or dependent child may file a sworn complaint with respect to that child in the juvenile court of the county in which the child has a residence or legal settlement or in which such delinquency, unruliness, abuse, neglect, or dependency allegedly occurred); R.C. 2151.353 (disposition of an abused, neglected, or dependent child); R.C. 2151.354 (disposition of an unruly child); R.C. 2151.355 (disposition of a delinquent child); R.C. 5153.16(B)(3) (a children services board that functions as a county's public children services agency, *see* R.C. 2151.011(B)(25), shall "[a]ccept custody of children committed to [it] by a court exercising juvenile jurisdiction"); R.C. 5153.18 (powers and duties of county children services board relative to court proceedings; division (A) of R.C. 5153.18 states that a county children services board "shall have the capacity possessed by natural persons to institute proceedings in any court"); Ohio R. Juv. P. 10.

In your letter you state that "[c]ourt costs, if approved, are to be collected through a final cost bill upon completion of the case or the payment of a security deposit at time of filing." *See generally* R.C. 2323.31 (providing that a court of common pleas "by rule may require an advance deposit for the filing of any civil action or proceeding," and further describing this deposit as "security" for "costs"); R.C. 2335.18 ("[t]he costs of the parties in all actions, motions, and proceedings, in any of the courts of this state, shall be taxed and entered of record separately"); R.C. 2335.19 (entering costs on judgment and on record). *See also* R.C. 2151.54 (the juvenile court shall tax and collect the same fees and costs as are allowed the clerk of the court of common pleas for similar services);² R.C. 2151.3512 (schedule of fines and costs that the juvenile court may impose when a child is adjudicated a delinquent or a juvenile traffic offender).

Your inquiry presents us with two separate issues: whether a juvenile court has the authority to impose and collect costs from parties to actions that are filed in the juvenile court, and, if so, whether that authority may be exercised to require the payment of such costs by a county children services board when the board is a party to such an action. Resolution of the first issue requires that we consult the specific provisions of R.C. 2151.54; resolution of the second issue will be found in several recent Attorney General opinions that have considered the imposition of court costs against county agencies or county officeholders, and the liability of these agencies or officeholders for the payment of those costs. Let us examine each of these issues in turn.

Regarding the authority of a juvenile court to impose court costs, R.C. 2151.54 reads, in pertinent part, as follows:

² Rule 30 of the local rules of the Trumbull County Court of Common Pleas, Domestic Relations/Juvenile Division, imposes an advance deposit requirement for certain categories of filings in that court, and specifies the amount of deposit for each such category. In juvenile actions rule 30.03 imposes cost deposits of \$75.00 and \$40.00 for the filing of complaints and motions, respectively. The cost deposit for criminal, delinquency, or unruly complaints in juvenile actions is \$38.00. *Id.*

The juvenile court shall tax and collect the same fees and costs as are allowed the clerk of the court of common pleas for similar services. No fees or costs shall be taxed in cases of delinquent, unruly, dependent, abused, or neglected children except as required by section 2743.70 or 2949.091³ of the Revised Code or when specifically ordered by the court....

If a child is adjudicated to be a delinquent child or a juvenile traffic offender and the juvenile court specifically is required, by section 2743.70 or 2949.091 of the Revised Code or any other section of the Revised Code, to impose a specified sum of money as court costs in addition to any other court costs that the court is required or permitted by law to impose, the court shall not waive the payment of the specified additional court costs that the section of the Revised Code specifically requires the court to impose unless the court determines that the child is indigent and the court either waives the payment of all court costs or enters an order in its journal stating that no court costs are to be taxed in the case. (Footnote added.)

Accordingly, except in cases of delinquent, unruly, dependent, abused, or neglected children, R.C. 2151.54 grants a juvenile court the authority to tax and collect the same fees and costs as are allowed the clerk of the court of common pleas for similar services.⁴ No fees or costs shall be taxed

³ R.C. 2743.70(A)(2) and R.C. 2949.091(A)(2) require a juvenile court to impose a specific sum of money as costs against a child found to be a delinquent child or a juvenile traffic offender for an act which, if committed by an adult, would be an offense other than a traffic offense that is not a moving violation, unless the court determines the juvenile is indigent and waives the payment of all court costs, or enters an order on its journal stating that it has determined that the juvenile is indigent, that no other court costs are to be taxed in the case, and that the payment of the sum specified as court costs is waived.

⁴ The categories of fees and costs that may be imposed against parties and thereafter collected by the clerk of courts in actions filed in a court of common pleas are enumerated in various provisions that appear throughout R.C. Chapters 2303 (clerk of the court of common pleas), 2323 (judgment), and 2335 (fees; costs). *See, e.g.*, R.C. 2303.20 (granting the clerk of a court of common pleas the authority to charge fees of predetermined amounts for specific filing, docketing, and copying tasks he performs with respect to pleadings and other records of the court entrusted to his custody); R.C. 2303.201 (additional fees the clerk of a court of common pleas may charge to pay for the expense of certain computer services); R.C. 2323.31; R.C. 2335.05 (providing that "each person subpoenaed as a witness shall be allowed one dollar for each day's attendance," and "[s]uch fee shall be taxed in the bill of costs"); R.C. 2335.06 (providing that "[e]ach witness in civil cases shall receive the following fees," and thereafter enumerating the amounts of those fees to be paid each witness for attendance as a witness at court or at a deposition and for the mileage the witness has traveled and directing that those fees are "to be taxed in the bill of costs," R.C. 2335.06(A)); R.C. 2335.28(A) (in any civil action in a court of common pleas in which a jury is sworn, "the fees of the jurors sworn shall be taxed as costs unless the court determines that the payment of the fees by a party against whom they are proposed to be taxed would cause significant financial hardship to that party or would not be in the interest of justice"). *See also* R.C. 2335.32 ("[i]n all cases, when

by the juvenile court in cases of delinquent, unruly, dependent, abused, or neglected children except as required by R.C. 2743.70 or R.C. 2949.091 or when specifically ordered by the court. *Id.*

Your question concerns cases filed by the Trumbull County Children Services Board in which a particular child is alleged to be delinquent, unruly, abused, neglected, or dependent, and cases in which the Board seeks to obtain custody of such a child. Pursuant to the express terms of R.C. 2151.54, no fees or costs shall be taxed by the Trumbull County Court of Common Pleas, Domestic Relations/Juvenile Division in such cases except as required by R.C. 2743.70 or R.C. 2949.091 or when specifically ordered by the court.

We must now consider whether a county children services board may be required to pay court costs that are imposed by a juvenile court pursuant to R.C. 2151.54. In answering this question it will be helpful to examine several recent opinions of the Attorney General that have addressed the imposition of court costs against county agencies or county officeholders, and the liability of these agencies or officeholders for the payment of those costs. *See* 1988 Op. Att'y Gen. No. 88-094; 1983 Op. Att'y Gen. No. 83-075. *See also* 1989 Op. Att'y Gen. No. 89-015; 1987 Op. Att'y Gen. No. 87-022.

The general rule recognized in these opinions is that a county agency or county officeholder, as a party in a judicial proceeding, may be liable for the payment of court costs. It is our opinion that this rule also applies when the Trumbull County Children Services Board is a party to an action filed in the Trumbull County Court of Common Pleas, Domestic Relations/Juvenile Division. Let us first review, therefore, the analyses and conclusions of these opinions, and then proceed to an explanation of why that same rule governs in this instance.

demanding by a person liable for the payment of any fees or costs to an officer, such officer, without charge, shall make, sign, and deliver to the person an itemized bill of such fees or costs"); R.C. 2335.35 (disposition of all unclaimed "moneys, fees, costs, debts, and damages" remaining in the hands of certain court officials and the county sheriff).

In Op. No. 83-075 the Attorney General addressed a series of four questions related to this issue, involving civil actions commenced in the Summit County Court of Common Pleas and the Akron Municipal Court. Concerning the payment of an advance deposit as security for costs at the time an action is filed, the Attorney General advised that a county or county officeholder, prior to filing a civil action or commencing legal proceedings, "may, pursuant to rule of court, be required by the clerk of courts to provide security for costs, except when the presiding judge pursuant to court rule otherwise orders, or when the defendant in such an action waives the security requirement."⁵ Op. No. 83-075 (syllabus, paragraph one). In reaching this conclusion the Attorney General referred to the language of R.C. 2323.31 that authorizes a court of common pleas by rule to require an advance deposit for the filing of any civil action or proceeding, and noted the absence of any statute or established rule in Ohio that would exempt a county or county officeholder from the operation of court rules requiring the deposit of a sum of money as security for costs prior to the filing of a civil action. *Id.* at 2-309.

Op. No. 83-075 also addressed questions regarding the liability of a county or county officeholder for the payment of court costs in those instances in which the county or county officeholder unsuccessfully prosecutes a civil action, or in which the county or county officeholder

⁵ The statement concerning an exception for instances in which "the presiding judge pursuant to court rule otherwise orders" was based upon an exception to that effect in the local rules of both the Summit County Court of Common Pleas and the Akron Municipal Court. Rule 30.02 of the local rules of the Trumbull County Court of Common Pleas, Domestic Relations/Juvenile Division provides that

[t]he Court may for good cause waive the deposit of court costs **UPON THE FILING WITH THE CLERK** a satisfactory affidavit identifying the assets and earnings of the party who wishes the court to waive the deposit **TOGETHER WITH A STATEMENT BY COUNSEL** who represents said party stating that counsel has received no fees for representation in the matter now before the court.

In the alternative, counsel may submit in lieu of the aforementioned statement, a letter from a duly authorized legal aid corporation indicating that the party who wishes the court cost deposit to be waived is entitled to legal aid with counsel on a contractual basis with a partial fee to be paid to said counsel.

In either such event, regardless of whether the affidavit by the party is submitted with a statement by counsel or with a letter from the legal aid corporation, the party shall deposit the court costs **PRIOR** to the hearing on the merits **UNLESS** prior to the request for assignment for trial the Court shall have waived the costs by appropriate order. (Emphasis in original.)

In *State ex rel. Houghton v. Pethel*, 138 Ohio St. 20, 23, 32 N.E.2d 411, 413 (1941), the Ohio Supreme Court stated that although G.C. 11614 and G.C. 11615 (now R.C. 2323.30 and R.C. 2323.31) require the posting of security for costs, "a defendant may waive those requirements by pleading or demurring."

is an unprevailing party defendant. The Attorney General advised that a county or county officeholder, when they are parties plaintiff or defendant to civil actions in which they do not prevail, "may be liable to the clerk of courts for all costs incurred in the actions, except where the rules of civil procedure or statutes pertaining to costs state otherwise, or where the court otherwise directs." Op. No. 83-075 (syllabus, paragraph two).

In arriving at this conclusion the Attorney General reviewed the provisions of Ohio R. Civ. P. 54(D)⁶ that authorize the awarding of costs to a prevailing party, and the discussion by the court of appeals in *White v. White*, 50 Ohio App. 2d 263, 269, 362 N.E.2d 1013, 1017-18 n. 1 (Cuyahoga County 1977), of the difference between the taxing and collection of costs by the clerk of courts and the awarding of costs to either party by the trial court in the final judgment. On the basis of these authorities, Op. No. 83-075 stated as follows at 2-310 and 2-311:

[E]ach party to an action is primarily liable to the clerk of courts for his costs in the action as he incurs them, as a matter of the taxing and collection of costs, a liability which does not, by the operation Ohio R. Civ. P. 54(D), shift to the unprevailing party. As a practical matter, pursuant to the authority of R. Civ. P. 54(D), a prevailing party may obtain judgment for his costs, execute against the unprevailing party, and proceed with the collection of his costs.

Ohio R. Civ. P. 54 (D) governs the award of costs in all civil actions in all courts of the state, but does not apply, in its own words, "when express provision [for costs] is made either in a statute or in these rules...." Other civil rules do apply to the allocation of costs, and therefore control the question as to which party bears the costs mentioned in those rules. *See, e.g.*, Ohio R. Civ. P. 27(E) (costs of deposition); Ohio R. Civ. P. 41(D) (cost of previously dismissed action).

Again, I am aware of no statute or established rule in Ohio which would exempt a county or county officeholder from the operation of a civil rule of procedure that allows costs to the prevailing party to an action. However, pursuant to R. Civ. P. 54(D), the court may rule otherwise, and since under the provisions of R.C. 2335.18-.33 the party on whose behalf the costs were incurred remains primarily liable to the

⁶ Rule 54(D) of the Ohio Rules of Civil Procedure states that "[e]xcept when express provision therefor is made either in a statute or in these rules, costs shall be allowed to the prevailing party unless the court otherwise directs." The Ohio Rules of Civil Procedure, however, do not apply to proceedings in the juvenile court. *See, e.g., Squires v. Squires*, 12 Ohio App. 3d 138, 468 N.E.2d 73 (Preble County 1983). Such proceedings are instead governed by the Ohio Rules of Juvenile Procedure, *see* Ohio R. Juv. P. 1(A), and those rules do not set forth a provision identically analogous to Ohio R. Civ. P. 54(D). *But see* Ohio R. Juv. P. 4(G) ("[t]he court may fix compensation for the services of appointed counsel and guardians ad litem, tax the same as part of the costs and assess them against the child, the child's parents, custodian, or other person in loco parentis of such child"); Ohio R. Juv. P. 32(D) ("[t]he court may tax as costs all or any part of the expenses of each investigation" pertaining to the allocation of parental rights and responsibilities for the care of children).

clerk of courts for the payment of those costs, the court may always, in its discretion, order each party to bear his own costs. (Footnotes omitted.)

Finally, Op. No. 83-075 considered the assessment and payment of court costs when the county or a county officeholder is both a plaintiff and defendant in the same action. Regarding the payment of an advance deposit as security for costs, the Attorney General expressed the view that the fact that the county or a county officeholder may be both a plaintiff and a defendant in the same action "does not affect the operation of the rules which control the issue of who may be required to furnish security for the payment of court costs." Op. No. 83-075 at 2-312. Regarding each party's liability for court costs, the Attorney General advised that Ohio R. Civ. P. 54(D) "applies to all civil actions regardless of the nature of the parties," and the county or county officeholder "each remain primarily liable to the clerk of courts for the payment of their respective costs..., and in the absence of an order or agreement to the contrary, the party who prevails in the action may recover judgement for his costs and collect them from the unprevailing party." *Id.*

In Op. No. 88-094 the Attorney General was asked to address several issues pertaining to the performance of legal services for county child support enforcement agencies. Among those issues was whether a child support enforcement agency represented by a prosecuting attorney might be exempt from the payment of court costs incurred in connection with a child support enforcement action, and whether the agency or the prosecuting attorney might be exempt from paying an advance deposit as security for those costs at the time the child support enforcement action is filed.

Relying upon the analyses and authorities set forth in Op. No. 83-075, syllabus paragraphs two and three of Op. No. 88-094 concluded as follows with respect to the foregoing issues:

2. Where the county prosecuting attorney represents a party in a child support enforcement action, such party is subject to the statutory scheme governing the taxation and collection of costs by the clerk of courts and the provisions of R. Civ. P. 54(D) concerning the allowance of costs by the court, in the absence of any federal or state law establishing an exemption therefrom.
3. Whether a county prosecuting attorney must present a deposit for costs upon the filing of a child support enforcement action depends upon whether the court of common pleas in which the action is filed has adopted a local rule under R.C. 2323.31 requiring such a deposit.

With respect to the conclusion in syllabus paragraph one, Op. No. 88-094 specifically noted, at 2-457, that numerous statutes governing child support enforcement actions provide for the court's awarding of costs against an obligor, yet no statute or other provision of law existed that "exempts a party represented by the county prosecuting attorney from the payment of costs," as well as the absence of any statute or other provision of law that "exempts a party represented by the county prosecuting attorney in a child support enforcement action from the statutory scheme otherwise governing the taxation and collection of costs." *Id.* With respect to the conclusion regarding the advance payment of security for costs in syllabus paragraph two, Op. No. 88-094 further observed

the absence of any statute or other law that "provides an exemption from making such deposit merely on the basis that it is the county prosecuting attorney who is bringing the action."⁷

I concur in the conclusions of my predecessor in Op. No. 83-075 and Op. No. 88-094, and am persuaded that these opinions accurately set forth the principles of law applicable to the assessment, collection, and payment of costs in state court actions to which a county agency or a county officeholder is a party. As pertains to your particular inquiry, "[a] county children services board is an agency of the county, created pursuant to R.C. Chapter 5153 for the purpose of carrying out various responsibilities with respect to children who are in need of public care or protective services." 1995 Op. Att'y Gen. No. 95-027 at 2-134. *See also Wade v. Bethesda Hospital*, 356 F. Supp. 380, 385 (S.D. Ohio 1973) (a county children services board is created by state statute, R.C. 5153.04, and as such the board "is an agent of the county").

Because a county children services board is an agency of the county, it follows that the principles of law set forth in Op. No. 83-075 and Op. No. 88-094 also apply when a children services board is a party to an action filed in the juvenile court. Moreover, there is no provision within R.C. Chapter 2151 (juvenile court) or R.C. Chapter 5153 (county children services) that exempts a county children services board from the operation of those provisions of the Revised Code addressed to the imposition and collection of costs in state court actions, nor are we aware of any decisions by the Ohio courts finding a county children services board exempt from the operation of those provisions generally. This means that a county children services board is subject to the provisions of R.C. 2151.54 governing the taxation and collection of court costs by the juvenile court, and thus may be required to pay court costs that are taxed by the juvenile court in accordance with the provisions of that section.

Accordingly, when the Trumbull County Children Services Board is a party to an action filed in the Trumbull County Court of Common Pleas, Domestic Relations/Juvenile Division, the Board is subject to the provisions of R.C. 2151.54 governing the taxation and collection of court

⁷ In support of the latter statement 1988 Op. Att'y Gen. No. 88-094 also referred to the conclusion set forth in the syllabus paragraph of 1987 Op. Att'y Gen. No. 87-022 that no state or federal statutes or regulations prohibit courts of common pleas from requiring, through a local rule, a court cost deposit in actions brought pursuant to title IV-D of the Social Security Act on behalf of nonrecipients of public assistance to enforce or modify child support obligations. If a court cost deposit is required in any such action that is filed through a county's title IV-D agency, the county's department of human services must advance the deposit. *Id.*

1989 Op. Att'y Gen. No. 89-015 advises in syllabus paragraph two that where a county prosecuting attorney represents an appellant who is a nonrecipient of aid to dependent children on appeal in a child support enforcement action, "should the court of appeals require a deposit as security for costs or should the appellant be required to pay the cost of the transcript as part of the record on appeal, the child support enforcement agency must advance such deposit and cost of the transcript."

costs by the juvenile court. The Trumbull County Children Services Board may be required to pay court costs that are taxed by the Trumbull County Court of Common Pleas, Domestic Relations/Juvenile Division in accordance with the provisions of that section.

Based upon the foregoing, therefore, it is our opinion, and you are advised that:

1. Except in cases of delinquent, unruly, dependent, abused, or neglected children, R.C. 2151.54 grants a juvenile court the authority to tax and collect the same fees and costs as are allowed the clerk of the court of common pleas for similar services. No fees or costs shall be taxed by the juvenile court in cases of delinquent, unruly, dependent, abused, or neglected children except as required by R.C. 2743.70 or R.C. 2949.091 or when specifically ordered by the court.
2. Pursuant to R.C. 2151.54, no fees or costs shall be taxed by the Trumbull County Court of Common Pleas, Domestic Relations/Juvenile Division in cases filed by the Trumbull County Children Services Board in which a particular child is alleged to be delinquent, unruly, abused, neglected, or dependent, or in which the Board seeks to obtain custody of such a child, except as required by R.C. 2743.70 or R.C. 2949.091 or when specifically ordered by the court.
3. A county children services board is subject to the provisions of R.C. 2151.54 governing the taxation and collection of court costs by the juvenile court, and may be required to pay court costs that are taxed by the juvenile court in accordance with the provisions of that section.
4. When the Trumbull County Children Services Board is a party to an action filed in the Trumbull County Court of Common Pleas, Domestic Relations/Juvenile Division, the Board is subject to the provisions of R.C. 2151.54 governing the taxation and collection of court costs. The Trumbull County Children Services Board may be required to pay court costs that are taxed by the Trumbull County Court of Common Pleas, Domestic Relations/Juvenile Division in accordance with the provisions of that section.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

April 30, 1997

The Honorable Dennis Watkins
Trumbull County Prosecuting Attorney
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160 High Street N.W.
Warren, Ohio 44481-1092

SYLLABUS:

97-024

1. Except in cases of delinquent, unruly, dependent, abused, or neglected children, R.C. 2151.54 grants a juvenile court the authority to tax and collect the same fees and costs as are allowed the clerk of the court of common pleas for similar services. No fees or costs shall be taxed by the juvenile court in cases of delinquent, unruly, dependent, abused, or neglected children except as required by R.C. 2743.70 or R.C. 2949.091 or when specifically ordered by the court.
2. Pursuant to R.C. 2151.54, no fees or costs shall be taxed by the Trumbull County Court of Common Pleas, Domestic Relations/Juvenile Division in cases filed by the Trumbull County Children Services Board in which a particular child is alleged to be delinquent, unruly, abused, neglected, or dependent, or in which the Board seeks to obtain custody of such a child, except as required by R.C. 2743.70 or R.C. 2949.091 or when specifically ordered by the court.
3. A county children services board is subject to the provisions of R.C. 2151.54 governing the taxation and collection of court costs by the juvenile court, and may be required to pay court costs that are taxed by the juvenile court in accordance with the provisions of that section.
4. When the Trumbull County Children Services Board is a party to an action filed in the Trumbull County Court of Common Pleas, Domestic Relations/Juvenile Division, the Board is subject to the provisions of R.C. 2151.54 governing the taxation and collection of court costs. The Trumbull County Children Services Board may be required to pay court costs that are taxed by the Trumbull County Court of Common Pleas, Domestic Relations/Juvenile Division in accordance with the provisions of that section.