

June 15, 2012

The Honorable Ryan Styer
Tuscarawas County Prosecuting Attorney
125 East High Avenue
New Philadelphia, Ohio 44663

SYLLABUS:

2012-020

Judgments for unpaid court costs owed to the clerk of court for the court of common pleas are judgments in favor of the state for the purpose of determining dormancy under R.C. 2329.07.



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OPINION NO. 2012-020

The Honorable Ryan Styer
Tuscarawas County Prosecuting Attorney
125 East High Avenue
New Philadelphia, Ohio 44663

Dear Prosecutor Styer:

You have requested an opinion regarding when a judgment for unpaid court costs becomes dormant or ceases to be a lien against a judgment debtor's property. A member of your staff has clarified that you would like us to address judgments for unpaid court costs in criminal and civil matters owed to the clerk of court for the court of common pleas. This opinion, therefore, addresses judgments for unpaid court costs owed to the clerk of the court of common pleas.

To answer your question we must determine whether a judgment for court costs in favor of a clerk of court is a judgment in favor of the state. If a judgment for court costs is a judgment in favor of the state, then the judgment will continue to be a lien if execution is issued or a certificate of judgment is issued within ten years after the filing date of the judgment or within fifteen years after the date of the last execution on the judgment or the last issuance of a certificate of judgment, whichever is later. For the following reasons, we conclude judgments for unpaid court costs owed to the clerk of court for the court of common pleas are judgments in favor of the state for the purpose of determining dormancy under R.C. 2329.07.

Definition of Court Costs and the Parties' Obligation to Pay Costs

In addressing your question it will help to have an understanding of the term "court costs" and the rationale behind taxing costs to litigants in court cases.¹ The Ohio Supreme Court has defined "costs" as "the statutory fees to which officers, witnesses, jurors and others are entitled for their services in an action ... and which the statutes authorize to be taxed and included in the judgment." *Centennial Ins. Co. v. Liberty Mut. Ins. Co.*, 69 Ohio St. 2d 50, 50-51, 430 N.E.2d 925 (1982) (quoting *State ex rel. Comm'rs of Franklin Cty. v. Guilbert*, 77 Ohio St. 333, 338-39, 83 N.E. 80 (1907)); see also *Christe v. GMS Mgmt. Co., Inc.*, 88 Ohio St. 3d 376, 378, 2000-Ohio-351, 726

¹ Although the Revised Code refers variously to "fees" and "costs," for the purpose of this opinion, we will refer to fees and costs taxed by the clerk of court or the court of common pleas collectively as "court costs."

N.E.2d 497; *Miller v. Gustus*, 90 Ohio App. 3d 622, 626, 630 N.E.2d 68 (Franklin County 1993); 2007 Op. Att’y Gen. No. 2007-030, at 2-312 to 2-313; 1996 Op. Att’y Gen. No. 96-058, at 2-222.

Courts are directed by statute to tax various fees and costs in civil cases and criminal cases. *See, e.g.*, R.C. 2746.01 (fees for court-appointed appraisers, commissioners, arbitrators, auctioneers, interpreters, publication costs, sheriff services, and witness fees); R.C. 2746.02 (fees for financial sanctions in felony cases, cost of prosecution in criminal cases, cost of confinement for misdemeanor cases, cost of supervised community service, cost of medical treatment or testing for certain offenders, cost of presentence investigation psychological reports, cost of electronic monitoring in certain cases, cost of a transcript in a post-conviction relief proceeding, and the fee for sealing a record of conviction); R.C. 2746.04 (fees required to be charged by a court of common pleas including fees for computerized research, various filing fees for different types of cases, fees for interpreters, fees for jurors in civil cases, fees for shorthand reporters, the expenses of taking a deposition of an incarcerated or detained person in a civil case, fees related to a judgment debtor examination, transcription expense for an appeal from an agency’s order, expense of providing supervised visitation in cases with a domestic violence protection order, the cost of appointed counsel in a proceeding to have someone involuntarily institutionalized); R.C. 2746.05 (fees required in juvenile court cases); R.C. 2746.06 (fees required in probate court cases); R.C. 2746.09 (cost and expenses of a court-appointed receiver in tax collection actions, cost of a court-appointed referee, receiver, or master in a case brought by the Attorney General for violation of the Business Opportunity Plans Act, the Consumer Sales Practices Act, or the Condominium Act, and other fees allowed by a court rule for a receiver); R.C. 2303.20 (various filing fees to be charged by the clerk of the court of common pleas).² “The 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. 2335.18.

The Ohio Supreme Court has recognized that “[t]he duty to pay court costs is a civil obligation arising from an implied contract.” *State v. Joseph*, 125 Ohio St. 3d 76, 2010-Ohio-954, 926 N.E.2d 278, at ¶20 (quoting *Strattman v. Studt*, 20 Ohio St. 2d 95, 253 N.E.2d 749 (1969) (syllabus, paragraph 6)). Whether in a civil or criminal case, a litigant’s involvement in court proceedings renders him liable, by implied contract, for the payment of court costs. *State v. Joseph* at ¶20 (quoting *Strattman v. Studt*, 20 Ohio St. 2d at syllabus, paragraph 6). “[C]osts are taxed against certain litigants for the purpose of lightening the burden on taxpayers financing the court system.” *State v. Threatt*, 108 Ohio St. 3d 277, 2006-Ohio-905, 843 N.E.2d 164, at ¶15 (quoting *Strattman v. Studt*, 20 Ohio St. 2d at 102); 1989 Op. Att’y Gen. No. 89-106, at 2-518 (“[t]he fixing of the amount of costs represents the decision of the legislature as to what part of the expense of maintaining the state

² R.C. 2746.01, R.C. 2746.02, R.C. 2746.04, R.C. 2746.05, R.C. 2746.06, and R.C. 2746.09 were enacted by Sub. H.B. 5, 129th Gen. A. (2011) (eff. Sept. 23, 2011), to consolidate references to fees and costs authorized to be taxed pursuant to other sections of the Revised Code.

judicial system should be borne by individual litigants and what part should be provided from public funds”).³

A distinction exists between the taxing of costs by the clerk of court pursuant to R.C. 2335.18-.33 and a court’s awarding of costs to a prevailing party in a final judgment pursuant to Ohio R. Civ. P. 54(D). *White v. White*, 50 Ohio App. 2d 263, 270 n.1, 362 N.E.2d 1013 (Cuyahoga County 1977); 1983 Op. Att’y Gen. No. 83-075, at 2-310. Ohio R. Civ. P. 54(D) addresses the court’s authority to award costs to a prevailing party at the conclusion of the case in order to make the prevailing party whole; R.C. 2335.18, in contrast, addresses the responsibility of each party to pay costs incurred by the party during the course of the litigation. *White v. White*, 50 Ohio App. 2d at 270 n.1; *Castle v. Roach*, 11 Ohio Dec. 358, 359 (C. P. Franklin County 1900) (“the parties to a suit pay their own costs as they are incurred during the progress of a case, and judgment for costs is rendered in favor of the prevailing party, upon the theory that he has paid, or is liable for, the costs incurred by him, and to reimburse him therefor”). R.C. 2335.18 requires the separate taxing of the costs of the parties in all actions in any court in Ohio, and so the primary responsibility for the payment of costs rests with the party that incurs the costs. *White v. White*, 50 Ohio App. 2d at 270 n.1.

If the costs are not paid to the clerk of court while a case is pending and the prevailing party does not immediately seek execution to recover the costs from the non-prevailing party, or is unsuccessful in seeking execution on the judgment against the non-prevailing party for the costs, the clerk of court, for his own benefit, may issue an execution to obtain payment of the costs from the party who originally incurred the costs. R.C. 2335.21⁴ The clerk may collect the prevailing party’s costs from the prevailing party, regardless of whether the prevailing party was awarded the costs by the court in the judgment. *White v. White*, 50 Ohio App. 2d at 270 n.1; 1983 Op. Att’y Gen. No. 83-075, at 2-310 (“each party to an action is primarily liable to the clerk of courts for his costs in the

³ Unpaid court costs account for a significant sum of revenue owed to operate the state judicial system. For example, in Cuyahoga County between 2002 and 2010, approximately \$57 million in court costs were taxed and remained uncollected in the Cuyahoga Court of Common Pleas and the Eighth District Court of Appeals. Laura Johnston, *Uncollected Court Costs Nearly \$57 Million in Cuyahoga County*, The Plain Dealer, December 3, 2011, available at http://www.cleveland.com/cuyahoga-county/index.ssf/2011/12/ uncollected_court_costs_top_56 _million _in_cuyahoga_county.html.

⁴ “Execution” is defined as “3. [j]udicial enforcement of a money judgment, usu. by seizing and selling the judgment debtor’s property ... 4. A court order directing a sheriff or other officer to enforce a judgment, usu. by seizing and selling the judgment debtor’s property.” *Black’s Law Dictionary* 650 (9th ed. 2009). An execution to obtain payment of court costs issued on behalf of the clerk of court is an alternative to obtaining a lien on a debtor’s real property by way of a certificate of judgment. The process for seeking a writ of execution is described in R.C. 2327.01-.04.

action as he incurs them, as a matter of the taxing and collection of costs, a liability which does not, by the operation of Ohio R. Civ. P. 54(D), shift to the unprevailing party”).⁵

Judgments for Costs and Certificates of Judgment

A “judgment” is “[a] court’s final determination of the rights and obligations of the parties in a case.” *Black’s Law Dictionary* 918 (9th ed. 2009). Under the Ohio Rules of Civil Procedure, “judgments” include decrees and final appealable orders. Ohio R. Civ. P. 54(A). When a court renders a final judgment in a case, the prevailing party’s costs must be included in the prevailing party’s judgment. R.C. 2335.19(A). The costs of the non-prevailing party must be stated separately in the record or docket entry. *Id.* A prevailing party may not release, satisfy, or discharge any of the costs set forth in the judgment unless that party previously paid those costs to the clerk of court, unless those costs were paid to the party entitled to those costs, or unless those costs were legally assigned or transferred to the prevailing party by the party who was charged the costs in the record or docket. *Id.* A judgment entry that includes a judgment for costs is an order that authorizes the clerk of court to issue a certificate of judgment for all costs, including any interest due on the judgment for costs and any costs incurred by the clerk of court in collecting the judgment. R.C. 2335.19(B).

In order for a clerk of the court of common pleas to issue a certificate of judgment for costs, the clerk must provide an itemized bill of fees and costs to the person who owes the costs under the judgment. R.C. 2335.19(C). If the person who owes the costs does not pay the costs within thirty days of the clerk providing the itemized bill, the clerk must send a first notice detailing the costs owed in the itemized bill. *Id.* If that person who owes the costs does not pay the costs within thirty days of the first notice, the clerk must send that person a second notice requesting payment of the costs. *Id.* If the costs are not paid within ninety days of when the itemized bill was first provided by the clerk, the clerk may issue a certificate of judgment for costs. *Id.* When a certificate of judgment is issued and filed in the office of the clerk of the court of common pleas, filed in the office of the county recorder, and entered on the certificate of title for the land to be affected, the judgment or decree rendered by the court becomes a lien against the real property owned by the judgment debtor in any county.⁶ R.C. 2329.02.

⁵ If the clerk of court collects the prevailing party’s costs from the prevailing party, it becomes the prevailing party’s responsibility to recover her costs from the non-prevailing party by separately seeking execution or enforcement of the court’s judgment. *White v. White*, 50 Ohio App. 2d at 270 n.1; 1983 Op. Att’y Gen. No. 83-075, at 2-310 (“[a]s 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”). This opinion is limited to addressing the recovery of costs by the clerk of court from either party pursuant to R.C. 2335.19 in the event that the costs are not paid during the course of the litigation.

⁶ A judgment debtor may be either a plaintiff or a defendant in the underlying cause of action.

Dormancy of Judgments

After the issuance of a certificate of judgment, the judgment remains a lien on the property of a judgment debtor for a finite period of time. A judgment ceases to be a lien against the judgment debtor's real property when it becomes dormant.⁷ Under R.C. 2329.07(A), a judgment becomes dormant if neither execution on a judgment nor a certificate of judgment for obtaining a lien has been issued within a specified period of time. The period of time in which execution or a certificate of judgment must be obtained so that a judgment does not become dormant is dependent upon whether the judgment is in favor of the state.

R.C. 2329.07(A)(1) provides:

[i]f neither execution on a judgment ... nor a certificate of judgment for obtaining a lien upon lands and tenements is issued and filed, as provided in sections 2329.02 and 2329.04 of the Revised Code, within five years from the date of the judgment or within five years from the date of the issuance of the last execution thereon or the issuance and filing of the last such certificate, whichever is later, then, unless the judgment is in favor of the state, the judgment shall be dormant and shall not operate as a lien upon the estate of the judgment debtor.

This means that if a judgment is not in favor of the state and neither execution on the judgment nor a certificate of judgment has been issued, the judgment no longer is a lien on the judgment debtor's property within five years of the date of the issuance of the judgment, the date of the last issuance of execution on the judgment, or the date of the last issuance of a certificate of judgment, whichever is later. R.C. 2329.07(A)(1).

R.C. 2329.07(A)(2) provides:

[i]f the judgment is in favor of the state, the judgment shall not become dormant and shall not cease to operate as a lien against the estate of the judgment debtor provided that either execution on the judgment is issued or a certificate of judgment is issued and filed, as provided in sections 2329.02 and 2329.04 of the Revised Code, within ten years from the date of the judgment or within fifteen years from the date of the issuance of the last execution thereon or the issuance and filing of the last such certificate, whichever is later, except as otherwise provided in [R.C. 2329.07(C)].⁸ (Footnote added.)

⁷ "Dormant" is defined as "[i]nactive; suspended; latent." *Black's Law Dictionary* 563 (9th ed. 2009).

⁸ Division (C) of R.C. 2329.07 applies to judgments in favor of the state for which both of the following criteria apply: (1) "[t]he first issuance of execution on the judgment, or the first issuance and

Thus, a judgment in favor of the state continues to be a lien on the judgment debtor's property if execution on the judgment is issued or a certificate of judgment is issued and filed within ten years after the filing date of the judgment or within fifteen years after the filing date of the last execution on the judgment, or the date of the issuance and filing of the last certificate of judgment, whichever is later.⁹ R.C. 2329.07(A)(2).

Whether a Judgment is in Favor of the State for Purposes of R.C. 2329.07: Status of a Court of Common Pleas and a Clerk of Court

R.C. 2329.07 does not specify whether a judgment for court costs in favor of the clerk of court is "in favor of the state," nor does any other section of the Revised Code. R.C. 1.59(G) defines "state" as "any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legislative authority of the United States of America" and "the state" as "the state of Ohio." Neither definition, however, explicitly includes a clerk of court for the court of common pleas. Thus, it remains unclear whether a judgment for court costs owed to a clerk of court for a court of common pleas is a judgment in favor of the state under R.C. 2329.07(A).

In order to determine whether the phrase "in favor of the state" includes the clerk of court for the court of common pleas, we must determine whether the clerk of court for the court of common pleas is an arm of the state. If a clerk of court for the court of common pleas is an arm of the state, it follows that a judgment for costs owed to the clerk of court is a judgment in favor of the state. In order to determine whether a clerk of court is an arm of the state, we examine the relationship between the court of common pleas and the clerk of court, as well as the relationship between those two entities and the state.

filing of the certificate of judgment, was issued or issued and filed within the ten-year period" prior to September 26, 2003; and (2) "[s]ubsequent issuance of execution on the judgment or subsequent issuance and filing of the certificate of judgment would have been required" between September 26, 2003 and September 27, 2006, in order to avoid dormancy pursuant to the provisions of the statute in effect prior to that time period. If both of the criteria are met with respect to the judgment, then the judgment shall not become dormant if execution is issued or a certificate of judgment is issued and filed "within fifteen years after the expiration of the ten-year period following issuance of the last execution on the judgment or following the issuance and filing of the last such certificate, whichever is later." R.C. 2329.07(C)(3). Although division (C) does not alter our analysis, we have here summarized the text of the division for the reader's convenience.

⁹ A court may revive a dormant judgment pursuant to R.C. 2325.15-.20. Once a dormant judgment is revived, the judgment again operates as a lien against the real property of a judgment debtor. R.C. 2325.17.

A. Courts of Common Pleas as Arms of the State

The Ohio Constitution decrees that “[t]he judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law.” Ohio Const. art. IV, § 1; 2001 Op. Att’y Gen. No. 2001-020, at 2-114 n.4. The creation of a court of common pleas is separately provided for in the Ohio Constitution. Ohio Const. art. IV, § 4 (“[t]here shall be a court of common pleas and such divisions thereof as may be established by law serving each county of the state”); 1990 Op. Att’y Gen. No. 90-110, at 2-485 (“[p]ursuant to Ohio Const. art. IV, § 1, the legislature possesses the exclusive power to create courts inferior to the courts of appeals,” citing *State ex rel. Ramey v. Davis*, 119 Ohio St. 596, 165 N.E. 298 (1929)). R.C. Chapter 2301 sets forth the organization of the courts of common pleas in the state. R.C. 2301.01 establishes a court of common pleas with one or more judges in each county.

The judiciary is an autonomous branch of state government. *State ex rel. Bittikofer v. Babst*, 97 Ohio St. 64, 66, 119 N.E. 136 (1917). The Ohio Supreme Court has recognized that “[a] court is an instrumentality and an incident to sovereignty and is the repository of its judicial power.” *State ex rel. Cherrington v. Hutsinpillar*, 112 Ohio St. 468, 471, 147 N.E. 647 (1925). The court further noted “[a court] is the agency of the state by means of which justice is administered, and is that entity in the government to which the public administration of justice is delegated and committed.” *Id.* In particular, the court noted:

[t]he duty of providing courts of justice is a governmental function of the state, and the authority to establish a court must emanate from the supreme power of the state, otherwise the court itself is an absolute nullity, and all its proceedings are utterly void.... In the United States the state Constitutions usually create certain courts and confer on them designated powers, and such courts proceed directly from the sovereign will and constitute a coordinate and independent department of the government.

Id. at 473 (internal quotations removed); *see also State ex rel. O’Connor v. Davis*, 139 Ohio App. 3d 701, 713-14, 745 N.E.2d 494 (Summit County 2000) (“the administration and operation of a system of courts has been found to be a matter of state sovereignty”); *S. J. v. Hamilton Cty., Ohio*, 374 F.3d 416, 421 (6th Cir. 2004) (“[state] courts are the ‘adjudicative voice’ of the state itself”).

Ohio courts of common pleas have been recognized as arms of the state, which are “cloaked with sovereign immunity.” *S. J. v. Hamilton Cty.*, 374 F.3d at 420; *Molnar v. Klammer*, 11th Dist. No. 2004 L 072 CA, 2005-Ohio-6905, at ¶92; *Williams v. Leslie*, 28 Fed. Appx. 387, 389 (6th Cir. 2002); *Meyers v. Franklin Cty. Ct. of Common Pleas*, 81 Fed. Appx. 49, 55 (6th Cir. 2003) (concluding that suit for money damages against juvenile court judge and magistrate in their official capacities must fail because it is as if the suit was filed against the state itself); *Triplett v. Connor*, 109 Fed. Appx. 94, 96 (6th Cir. 2004) (holding Eleventh Amendment immunity applies to suit against a common pleas court judge in his official capacity).

In *S. J. v. Hamilton Cty., Ohio*, the United States Court of Appeals for the Sixth Circuit reiterated the following four-factor analysis to determine whether an entity was an arm of the state in the context of sovereign immunity under the Eleventh Amendment¹⁰ to the United States Constitution: “(1) whether the state would be responsible for a judgment against the entity in question; (2) how state law defines the entity; (3) what degree of control the state maintains over the entity; and (4) the source of the entity’s funding.” *S. J. v. Hamilton Cty.*, 374 F.3d at 420. The most important factor in the arm-of-the-state analysis is the first: whether the state will be responsible for a judgment against the entity. *Id.* at 420-421. Protecting the public purse was afforded such importance by the United States Supreme Court in *Regents of Univ. of Calif. v. Doe*, 519 U.S. 425, 430, 137 L. Ed. 2d 55, 117 S. Ct. 900 (1997) that the court in *S. J. v. Hamilton Cty., Ohio* questioned whether the other three factors continued to play a part in the analysis. *S. J. v. Hamilton Cty., Ohio*, 374 F.3d at 420-21; *see also Alkire v. Irving*, 330 F.3d 802, 811 (6th Cir. 2003) (“we now recognize that the question of who pays a damage judgment against an entity as the most important factor in arm-of-the-state analysis, though it is unclear whether it is the only factor or merely the principal one”).

The Eleventh District Court of Appeals adopted the Sixth Circuit’s conclusion that “an Ohio common pleas court is ... an arm of the state for purposes of section 1983 liability and Eleventh Amendment immunity analyses.” *Molnar v. Klammer*, at ¶92 (quoting *Mumford v. Basinski*, 105 F.3d 264, 268 (6th Cir. 1997)). Holding that the probate court was an arm of the state, the court noted that “the sovereign immunity doctrine is about money *and dignity* – it not only protects a state’s treasury but also pervasively ... emphasizes the integrity retained by each State in our federal system.” *Id.* at ¶97, 101 (internal quotations removed) (quoting *S. J. v. Hamilton Cty.*, 374 F.3d at 421).

Thus, a court of common pleas administers justice as an essential function of state government. In so doing, a court of common pleas exercises state sovereignty and possesses sovereign immunity, like the state itself. It follows, therefore, that a court of common pleas serves as an arm of the state for purposes of R.C. 2329.07.

B. The Clerk of the Court of Common Pleas as an Arm of the State

We will now determine whether a similar relationship exists between the state and the clerk of court for the court of common pleas. In each county, a clerk of court for the court of common pleas shall be elected. R.C. 2303.01. “The clerk of the court of common pleas is an elected officer who functions as an integral part of the common pleas court.” 2009 Op. Att’y Gen. No. 2009-044, at 2-317. The clerk of court shall “exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law; and in the performance of his duties he shall be under the direction of his court.” R.C. 2303.26; *see also* 2006 Op. Att’y Gen. No. 2006-011, at 2-92 to 2-93.

¹⁰ The Eleventh Amendment to the United States Constitution provides “[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.”

The clerk of court's statutory authority and duties are primarily enumerated in R.C. Chapter 2303. *See, e.g.*, R.C. 2303.05 (authority to appoint deputy clerks); R.C. 2303.07 (authority to administer oaths and certify affidavits, depositions, and acknowledgments of deeds, mortgages, powers of attorney, and other written instruments); R.C. 2303.08 (general duties regarding filing of pleadings and documents and keeping a complete record); R.C. 2303.09 (duty to file and preserve all papers in every action or proceeding); R.C. 2303.10 (duty to record the date of filing of each paper filed in his office); R.C. 2303.11 (duty to issue writs and process upon the filing of a praecipe); R.C. 2303.12 (duty to keep dockets); R.C. 2303.13 (duty to make entries on the appearance docket); R.C. 2303.14 (duty to keep journals, records, and books associated with the court); R.C. 2303.15 (duty to enter court's orders in the journal); R.C. 2303.18 (duty to keep an index of judgments that are not dormant); R.C. 2303.20 (duty to charge filing fees); 2003 Op. Att'y Gen. No. 2003-030, at 2-253 to 2-254.

In the performance of his court-related duties, the clerk of court acts as an arm of the court. *State ex rel. Stacey v. Halverstadt*, No. 87-C-30, 1987 Ohio App. LEXIS 9295, at *4 (Columbiana County Oct. 23, 1987); *see also State ex rel. McKean v. Graves*, 91 Ohio St. 23, 24, 109 N.E. 528 (1914) (holding clerk of Supreme Court is "only an arm of the court for issuing its process, entering its judgments and performing like duties which the court itself might perform"); 2003 Op. Att'y Gen. No. 2003-030, at 2-253. Consequently, "it logically follows that the clerks of court, who operate under the authority of the common pleas courts, are likewise arms of the state of Ohio ... at least when they conduct the business of the court or other duties mandated by state law." *Williams v. Leslie*, 28 Fed. Appx. at 389 (quoting district court's decision). Therefore, a clerk of court for the court of common pleas, in performing the business of the court, is also an arm of the state.

C. Judgments for Unpaid Court Costs are Judgments in Favor of the State

Even as the court of common pleas and the clerk of court are arms of the state and perform an essential function of the state, judgments for unpaid court costs owed to the clerk of court are judgments in favor of the state. The principles cited above establishing that the clerk of court and the court of common pleas are arms of the state control for purposes of determining whether a judgment for unpaid court costs is a judgment in favor of the state. *See S. J. v. Hamilton Cty., Ohio*, 374 F.3d at 421 ("[t]he Supreme Court explained ... that the sovereign immunity doctrine is about money *and* dignity – it not only protects a State's treasury, but also 'pervasively ... emphasizes the integrity retained by each State in our federal system'"); *Alkire v. Irving*, 330 F.3d at 811 ("we now recognize that the question of who pays a damage judgment against an entity as the most important factor in arm-of-the-state analysis"). Ensuring that a court's judgment for court costs is enforced secures the dignity of the courts by having their orders effectuated. Collecting court costs owed pursuant to judgments in favor of the clerk of court preserves the financial resources of the court and the clerk, which enables the court and the clerk to continue to efficiently operate the judicial system, an essential function of the state. Court costs are taxed to litigants so that the expense of managing the state's judicial system is shared by the litigants participating in the system. As the cases above demonstrate, the court of common pleas and the clerk of court are arms of the state when performing their duties related to the administration of justice. It follows that collecting revenue to support the operation of the judicial system is also a state function.

It is reasonable to conclude that the General Assembly would afford the clerk of court the maximum amount of time to seek execution of a judgment or to obtain a lien to satisfy a judgment for court costs before the judgment becomes dormant. If judgments for court costs become dormant in a shorter period of time, the clerk of court must expend more time and expense to revive the judgments. *See State v. Scheiba*, No. 80-09-0105, 1982 Ohio App. LEXIS 14305, at *5 (Butler County May 26, 1982) (“[t]he Legislative Service Commission Summary provides that the purpose of the amendment [of R.C. 2329.07 to note that the section applies to judgments in favor of the state] was to eliminate the necessity of searching county records for more than five years back”). Requiring the clerk of court to have judgments revived or to issue certificates of judgment more often does not serve the state’s interest of administering an efficient system of justice. In this sense, the clerk of court is functioning on behalf of the court of common pleas in fulfilling the court’s duty of administering justice throughout the state. The clerk of court is thus acting on behalf of the state. Accordingly, judgments to collect the costs taxed by the clerk of court for the court of common pleas are judgments in favor of the state for the purpose of determining dormancy under R.C. 2329.07.¹¹

¹¹ Further affirmation of this conclusion may be drawn from other sections of the Revised Code. R.C. 1907.38 provides that a judgment entry of a county court ordering a fine against a witness arrested for failing to appear pursuant to a subpoena or who refuses to testify “has the effect of a judgment in favor of this state against the witness or person, and it may be enforced against his person or property.” Thus, in the view of the General Assembly, an order of a county court under R.C. 1907.38 is a judgment favoring the state.

Another example is R.C. 2929.18, which provides that, subject to some exceptions, “a financial sanction imposed pursuant to division (A) or (B) of this section is a judgment in favor of the state or a political subdivision in which the court that imposed the financial sanction is located[.]” R.C. 2929.18(D). That section continues by differentiating whether financial sanctions imposed under the other divisions of R.C. 2929.18 are judgments in favor of the state, a municipal corporation, a private provider, or the victim depending upon the entity or person to whom the sanction is owed. *Id.* A similar differentiation is found in R.C. 2929.28, which addresses financial sanctions for misdemeanor cases. We infer from these statutes that an important factor in determining whether a judgment is in favor of the state or is in favor of another entity or person is the nature of the entity or person to whom the judgment debtor is indebted. In the context of judgments for unpaid court costs that are owed to the court of common pleas or the clerk of court, the court and the clerk are arms of the state, and thus, judgments for court costs owed to them are judgments in favor of the state.

Conclusion

In sum, it is my opinion, and you are hereby advised that judgments for unpaid court costs owed to the clerk of court for the court of common pleas are judgments in favor of the state for the purpose of determining dormancy under R.C. 2329.07.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General