

May 19, 2003

The Honorable Mathias H. Heck, Jr.
Montgomery County Prosecuting Attorney
5th Floor, Dayton-Montgomery County Courts Building
P.O. Box 972
301 West Third Street
Dayton, Ohio 45422

SYLLABUS:

2003-016

1. When a criminal prosecution brought in a municipal court for an alleged violation of state law results in the dismissal or acquittal of the defendant, the county pays the court costs. (1977 Op. Att’y Gen. No. 77-088, approved and followed; 1975 Op. Att’y Gen. No. 75-045 and 1961 Op. Att’y Gen. No. 2216, p. 271, questioned.)
2. A county must pay any cost or fee assessed against it by a municipal court in a criminal prosecution for an alleged violation of state law, provided the court is statutorily authorized to assess the cost or fee against the county.



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OPINION NO. 2003-016

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Dear Prosecutor Heck:

You have requested an opinion concerning the payment of court costs by the county in criminal prosecutions brought in a municipal court. In your letter, you state that “a dispute exists between Montgomery County, the City of Kettering, and the Clerk of Kettering Municipal Court concerning the continuing viability of [1977 Op. Atty. Gen. No. 77-088].” This opinion advised that, “[i]n an unsuccessful criminal prosecution, brought in a municipal court for an alleged violation of state law, fees for witnesses and jurors, and other court costs, are to be paid by the county.” 1977 Op. Atty. Gen. No. 77-088 (syllabus).

The city and clerk of court have determined that, based on this opinion, the county is required to pay all court costs when a criminal prosecution brought in a municipal court for an alleged violation of state law is unsuccessful. The county contends, however, that the opinion is no longer valid because R.C. 1901.31(F) requires the clerk of court to “pay all costs and fees the disbursement of which is not otherwise provided for in the Revised Code into the city treasury.”¹

¹ Section 1 of Article IV of the Ohio Constitution authorizes the General Assembly to establish courts inferior to the Ohio Supreme Court. Pursuant to this grant of authority, the General Assembly has enacted R.C. Chapter 1901, which establishes a system of municipal courts throughout the state. R.C. Chapter 1901 makes certain features common to all municipal courts and creates certain differences among the individual municipal courts. 1992 Op. Att’y Gen. No. 92-070 at 2-290 n.2; 1990 Op. Att’y Gen. No. 90-110 at 2-486.

One significant difference among the various municipal courts is the manner in which costs and fees collected by municipal court clerks are disbursed. R.C. 1901.31(F) provides, in pertinent part:

Except in a county-operated municipal court, the clerk shall pay all costs and fees the disbursement of which is not otherwise provided for in the Revised Code into

The county thus believes that it is not liable for any of these court costs. Because of these adverse views, you ask the following questions:

1. Given the specific provision as to the disbursement of court costs in the current version of R.C. § 1901.31(F), is the opinion expressed in 1977 Ohio Op. Atty. Gen. No. 77-088 still valid?
2. If it is, what is considered an “unsuccessful” state law prosecution?
3. Besides jury and witness fees that are imposed by statute, what type and kind of costs and/or fees must a county pay when there is an unsuccessful state law prosecution?

For ease of discussion, we will consider your first two questions together. In order to answer these two questions, we must first review the basis for 1977 Op. Att’y Gen. No. 77-088’s conclusion that the county is required to pay all court costs when a criminal prosecution brought in a municipal court for an alleged violation of state law is unsuccessful.² The opinion reasoned

the city treasury. *The clerk of a county-operated municipal court shall pay the costs and fees the disbursement of which is not otherwise provided for in the Revised Code into the county treasury. (Emphasis added.)*

Thus, except as otherwise provided in the Revised Code, the clerk of a county-operated municipal court is required to pay all costs and fees collected by him into a county treasury, while the clerk of any other municipal court is required to pay these costs and fees into a city treasury.

As used in R.C. Chapter 1901, “[c]ounty-operated municipal court” means “the Auglaize county, Brown county, Clermont county, Columbiana county, Crawford county, Hamilton county, Hocking county, Jackson county, Lawrence county, Madison county, Miami county, Morrow county, Ottawa county, Portage county, or Wayne county municipal court.” R.C. 1901.03(F). The General Assembly has not designated Kettering Municipal Court as a county-operated municipal court. Accordingly, the clerk of Kettering Municipal Court is required to pay all costs and fees he collects into the city treasury.

² If a person accused of violating a state law is convicted in a municipal court, the court costs are included in the sentence and a judgment for such costs is rendered against the defendant. R.C. 2947.23(A); *see* R.C. 309.08(A); R.C. 2335.11; R.C. 2949.111; R.C. 2949.14; R.C. 2949.15. Because the General Assembly requires a defendant to pay court costs only when he is convicted, it reasonably follows that a defendant who is not convicted is not required to pay court costs. *State v. Powers*, 117 Ohio App. 3d 124, 128, 690 N.E.2d 32 (Fulton County 1996); *see City of Cuyahoga Falls v. Coup-Peterson*, 124 Ohio App. 3d 716, 717, 707 N.E.2d 545 (Summit County 1997) (“there is no authority for a court to assess costs against a defendant who

that various statutes, *see, e.g.*, R.C. 1901.25; R.C. 1901.26(D) (now R.C. 1901.26(A)(4)); R.C. 1901.31(F); R.C. 1901.34; R.C. 2335.12, “indicate that in prosecutions for violations of state law the county is the subdivision most directly involved in the prosecution.” 1977 Op. Att’y Gen. No. 77-088 at 2-296. In this regard, the opinion stated at 2-297:

Although none of the quoted sections specifically answers your question, *these provisions do indicate that the county must bear various costs in prosecuting state misdemeanors in the municipal court. Each of the foregoing provisions clearly indicates that although the state is nominally the “losing party” when the defendant is acquitted or dismissed, the real party is the county.* It is the county which must compensate the city attorney for prosecuting state cases. R.C. 1901.34. It is the county which must pay the expenses for service of writs in state cases. R.C. 2335.12. It is the county which receives fines collected in state cases. R.C. 1901.31(F). It is the county which receives the deposits for court costs from the clerk of the municipal court when they are made in prosecutions for violation of state law. 1975 Op. Att’y Gen. No. 75-045.³

has not been sentenced, absent an agreement otherwise between the parties”); 1969 Op. Att’y Gen. No. 69-081 at 2-175 (“in order for the defendant to be responsible for the cost of the jury, he must be found guilty. The converse of this is that if he is innocent or acquitted, then he is not to be charged for the cost”); *see also* R.C. 1901.26(A)(7) (“[t]he municipal court, as it determines, may refund all deposits and advance payments of fees and costs, including those for jurors and summoning jurors, when they have been paid by the losing party”).

In addition, 1977 Op. Att’y Gen. No. 77-088 limited its examination to the liability of a county for court costs when there is no agreement between the prosecution and defense concerning the payment of court costs. *See, e.g., City of Cuyahoga Falls v. Coup-Peterson*. Because we are examining that opinion’s conclusion that a county is liable for court costs when a criminal prosecution brought in a municipal court for an alleged violation of state law is unsuccessful, we similarly limit our analysis to the liability of a county for court costs when there is no agreement concerning the payment of court costs. *See generally* 1983 Op. Att’y Gen. No. 83-087 at 2-342 (the Attorney General “is without authority to render an opinion interpreting a particular agreement or contract. The determination of particular parties’ rights is a matter which falls within the jurisdiction of the judiciary”).

³ The syllabus of 1975 Op. Att’y Gen. No. 75-045 advised that “[u]nder R.C. 1901.34 and R.C. 3375.50, the costs collected by the clerk of a municipal court in a state criminal proceeding are to be paid into the county treasury.” Thereafter, the General Assembly amended R.C. 1901.31(F) to provide as follows: “All costs, fees, and penalties not otherwise provided for shall be paid, subject to [R.C. 3375.50 and R.C. 3375.53], into the treasury of the municipal corporation in which the hearing court is located.” 1975-1976 Ohio Laws, Part II, 2456, 2458 (Sub. H.B. 375, eff. June 30, 1976). It thus appears that, at the time 1977 Op. Att’y Gen. No. 77-

Certainly, if the county receives the fines collected in successful state prosecutions, it would be anomalous to find that it has no responsibility for court costs in an unsuccessful prosecution. Therefore, in a criminal proceeding for violation of state law, brought in a municipal court, the county must pay the court costs if the defendant is either dismissed or acquitted. (Emphasis and footnote added.)

The analysis set forth in 1977 Op. Att’y Gen. No. 77-088 remains persuasive. A county, rather than a municipal corporation, is responsible for prosecuting violations of state law on behalf of the state.⁴ See R.C. 309.08(A); R.C. 1901.34(C); R.C. 2938.13; see also *State ex rel. Hayes v. Davies*, 6 Ohio C.C. (n.s.) 621, 1905 Ohio Misc. LEXIS 278 (Lucas County 1905). The county receives, subject to various provisions of the Revised Code, “all fines collected for the violation of state laws.” R.C. 1901.31(F).

The General Assembly also explicitly requires counties to pay certain specific costs and fees when criminal prosecutions involving violations of state law are brought in municipal courts. R.C. 1901.25 states that the fees of jurors in any criminal case in a municipal court involving a violation of state law are to be paid out of the county treasury. R.C. 1901.26(A)(4) provides that witnesses’ fees in any criminal case in a municipal court involving a violation of state law are to be paid out of the county treasury. See R.C. 2335.08. R.C. 1901.34 requires a village solicitor, city law director, or other similar chief legal officer of a municipal corporation to be paid additional compensation from the county treasury when he prosecutes violations of state law. R.C. 2335.12 states that a court officer who executes one of the writs specified in R.C. 2335.12 is entitled to receive from the county treasury his expenses in executing the writ. It thus appears from the foregoing that the General Assembly intended for a county to pay court costs when a criminal prosecution brought in a municipal court for an alleged violation of state law is unsuccessful.

We believe this to be the General Assembly’s intention, notwithstanding the language in R.C. 1901.31(F) that you have cited to us in your request for an opinion. This language requires the clerk of court of a municipal court that is not county-operated to “pay all costs and fees the

088 was issued, some court costs collected by a municipal court in criminal prosecutions for violations of state law were deposited into the treasury of the municipal corporation in which the court is located. Division (F) of R.C. 1901.31 now reads, in part, as follows: “Except in a county-operated municipal court, the clerk shall pay all costs and fees the disbursement of which is not otherwise provided for in the Revised Code into the city treasury.”

⁴ Although village solicitors, city law directors, and other similar chief legal officers of municipal corporations within the territory of a municipal court are required to prosecute violations of state law on behalf of the state, R.C. 1901.34(A); R.C. 2938.13, it is the county that compensates these officers for performing this duty, R.C. 1901.34(C). See 1977 Op. Att’y Gen. No. 77-088 at 2-297.

disbursement of which is not otherwise provided for in the Revised Code into the city treasury.” R.C. 1901.31(F). In other words, if the General Assembly has not provided for the disbursement of court costs collected by a municipal court that is not county-operated, the court costs are deposited into the city treasury.

Because court costs collected by a municipal court that is not county-operated are no longer deposited into the county treasury, *see* 1975-1976 Ohio Laws, Part II, 2456, 2458 (Sub. H.B. 375, eff. June 30, 1976), you assert that the General Assembly no longer intends for counties to pay court costs when a criminal prosecution brought in such a court for an alleged violation of state law is unsuccessful. Your reasoning appears to be that it would be unfair for the counties to pay these court costs when the counties do not receive any court costs for prosecuting violations of state law in municipal courts that are not county-operated.

A review of R.C. 1901.31(F) and R.C. 3375.50, however, discloses that the county does indeed receive either all or a portion of court costs collected by a municipal court that is not county-operated. As explained above, R.C. 1901.31(F) states that court costs collected by a municipal court that is not county-operated are deposited into the city treasury only when no other statute provides for the disbursement of these costs.

One statute that specifically provides for the disbursement of court costs collected by a municipal court is R.C. 3375.50. Pursuant to this statute, either all or a portion of court costs collected by a municipal court in criminal prosecutions for violations of state law are to be disbursed to pay a county’s portion of the compensation of various public officials. R.C. 3375.50 states, in part:

All fines and penalties collected by, and moneys arising from forfeited bail in, a municipal court for offenses and misdemeanors brought for prosecution in the name of a municipal corporation under one of its penal ordinances, where there is in force a state statute under which the offense might be prosecuted, or brought for prosecution in the name of the state, *except a portion of such fines, penalties, and moneys which, plus all costs collected monthly in such state cases, equal the compensation allowed by the board of county commissioners to the judges of the municipal court, its clerk, and the prosecuting attorney of such court in state cases,*⁵ shall be retained by the clerk of such municipal court, and be paid by him forthwith, each month to the board of trustees of the law library

⁵ Two-fifths of the amount of compensation paid to municipal court judges is “payable from the treasury of the county in which the municipal corporation is situated, except that all of the compensation of the judges of a county-operated municipal court ... [is] payable out of the treasury of the county in which the court is located.” R.C. 1901.11(C). The compensation of clerks of municipal courts is payable either entirely or partly from the county treasury. R.C. 1901.31. Additional compensation may be paid from the county treasury to an attorney who prosecutes violations of state law in municipal courts. R.C. 1901.34.

association in the county in which such municipal corporation is located.
(Footnote and emphasis added.)

Our prior opinions have interpreted this statute to mean that either all or a portion of court costs “collected in state cases shall either be paid into the county treasury, or at least credited against the county’s share of the compensation” allowed by the board of county commissioners to the judges of the municipal court, its clerk, and the prosecuting attorney of such court in state cases.⁶ 1975 Op. Att’y Gen. No. 75-045 at 2-175; *accord* 1961 Op. Att’y Gen. No. 2216, p. 271; 1953 Op. Att’y Gen. No. 2442, p. 125. As explained in 1953 Op. Att’y Gen. No. 2442, at 128:

Although [R.C. 3375.50] does not contain any express provision relative to the disposition of sums thus deducted from funds accruing from the prosecution of state cases, *it appears fairly evident that the sums thus remaining in the municipal officer’s custody were to be made available eventually, whether directly or indirectly, to meet the county’s obligation to the several court officers concerned with respect to the compensation allowed them by the county commissioners.* Whether such sums are disbursed directly to the ultimate beneficiaries or whether paid into the county treasury and then disbursed to such beneficiaries would appear to be a matter of no moment so long as credit is given the county in the final accounting with respect to its obligation to pay the allowances made by the commissioners. (Emphasis added.)

Thus, pursuant to R.C. 3375.50, either all or a portion of court costs collected by a municipal court in criminal prosecutions for violations of state law is used by the county to pay its share of the compensation of “the judges of the municipal court, its clerk, and the prosecuting attorney of such court in state cases.”

When R.C. 3375.50 and R.C. 1901.31(F) are construed together, it is readily apparent that the General Assembly intends that court costs collected by a municipal court in criminal prosecutions for violations of state law be used to pay the county’s portion of the compensation of the judges of the municipal court, its clerk, and the prosecuting attorney of such court in state cases. If any of these costs remain after this disbursement and any other disbursements required by the Revised Code, such remaining costs are deposited into a municipal corporation’s treasury to help defray the municipality’s costs in operating a municipal court.⁷ *See, e.g.,* R.C.

⁶ If the amount of court costs collected by a municipal court is insufficient to cover the county’s portion of the compensation of the judges of the court, its clerk, and the prosecuting attorney of such court in state cases, the difference is made up from various fines, penalties, and moneys arising from forfeited bail collected by the court. R.C. 3375.50.

⁷ As explained in note three, *supra*, the syllabus of 1975 Op. Att’y Gen. No. 75-045 advised that court “costs collected by the clerk of a municipal court in a state criminal proceeding are to be paid into the county treasury.” Similarly, the first syllabus paragraph of

1901.11(C) (in a municipal court that is not county-operated, three-fifths of the amount of compensation paid to the court's judges is payable from the city treasury); R.C. 1901.36 (the legislative authority of a municipal corporation is required to provide facilities and funds to facilitate the administration of justice by its municipal court). Nothing in the current provisions governing the disbursement of court costs collected by municipal courts in criminal prosecutions for violations of state law thus indicates that the General Assembly intended to shift the burden of prosecuting violations of state law in municipal courts from the counties to municipal corporations. Absent such an intention by the General Assembly, 1977 Op. Att'y Gen. No. 77-088 remains valid insofar as it advises that a county is required to pay court costs when a criminal prosecution brought in a municipal court for an alleged violation of state law is unsuccessful.

1977 Op. Att'y Gen. No. 77-088 also advises, at 2-297, that an unsuccessful criminal prosecution is one in which the "defendant is either dismissed or acquitted." The opinion states that, "in a criminal proceeding for violation of state law, brought in a municipal court, the county must pay the court costs if the defendant is either dismissed or acquitted." *Id.* See generally 1969 Op. Att'y Gen. No. 69-081 (syllabus) ("[a] defendant acquitted by a jury of a charge is entitled to the return of costs posted by him before the trial"). Accordingly, in response to your first and second questions, it is our opinion that, when a criminal prosecution brought in a municipal court for an alleged violation of state law results in the dismissal or acquittal of the defendant, the county pays the court costs.

Your final question asks what type and kind of court costs must a county pay when there is an unsuccessful state law prosecution. "[C]ourt costs are fees and charges required by law to be paid to the courts for services provided during the course of a criminal or civil proceeding." 1997 Op. Att'y Gen. No. 97-058 at 2-350; accord 1955 Op. Att'y Gen. No. 5086, p. 170, at 171. As stated in *State ex rel. Comm'rs of Franklin County v. Guilbert*, 77 Ohio St. 333, 338-39, 83 N.E. 80 (1907):

Costs, in the sense the word is generally used in this state, may be defined as being the statutory fees to which officers, witnesses, jurors and others are entitled for their services in an action or prosecution and which the statutes authorize to be taxed and included in the judgment or sentence. The word does not have a fixed legal signification. As originally used it meant an allowance to a party for expenses incurred in prosecuting or defending a suit. Costs did not necessarily cover all of the expenses and they were distinguishable from fees and disbursements. They are allowed only by authority of statute.

1961 Op. Att'y Gen. No. 2216, p. 271 advised that court costs collected by a municipal court are to be paid to the county treasurer. Because R.C. 1901.31(F) now requires a clerk of a municipal court that is not county-operated to deposit court costs into the city treasury, 1975 Op. Att'y Gen. No. 75-045 and 1961 Op. Att'y Gen. No. 2216, p. 271 are subject to question.

Accord Centennial Ins. Co. v. Liberty Mut. Ins. Co., 69 Ohio St. 2d 50, 50-51, 430 N.E.2d 925 (1982). Thus, the power of a municipal court to assess costs and fees in criminal cases “must be expressly granted by statute.” 1984 Op. Att’y Gen. No. 84-088 at 2-303.

With respect to your specific inquiry, we are aware of several statutes that set forth costs and fees that may be assessed against the county by a municipal court in a criminal prosecution.⁸ As noted in your letter, a municipal court may assess against the county the fees of jurors and witnesses incurred in any criminal case involving a violation of state law. R.C. 1901.25; R.C. 1901.26(A)(4); 1977 Op. Att’y Gen. No. 77-088; *see also* R.C. 2335.08; R.C. 2947.23(A)(2).

In addition, R.C. 1901.26(A) requires a municipal court to “establish a schedule of fees and costs to be taxed in any civil or criminal action or proceeding[,]” and authorizes a court to charge a fee for, *inter alia*, driving, towing, carting, storing, keeping, and preserving motor vehicles and other personal property recovered or seized in any proceeding; storing chattel property; and providing legal notices. A municipal court may also charge an additional fee on the filing of each criminal cause⁹ for special projects of the court, R.C. 1901.26(B), and an additional fee on the filing of each cause of action that is equivalent to one described in R.C.

⁸ There are many different types of criminal prosecutions that may be undertaken on behalf of the state in municipal courts. *See generally* R.C. Title 29 (setting forth the criminal offenses against the state). Also, the services provided by a municipal court in criminal prosecutions varies from case to case. *See generally* R.C. 1901.26(B)(1) (“[i]f the municipal court offers a special program or service in cases of a specific type, the municipal court by rule may assess an additional charge in a case of that type, over and above court costs, to cover the special program or service”). It is, therefore, not possible, by means of a formal opinion, to list all of the court costs that a municipal court may assess against a county when a criminal prosecution for an alleged violation of state law results in the dismissal or acquittal of the defendant.

⁹ As used in R.C. 1901.26(B), “[c]riminal cause” means the following:

a charge alleging the violation of a statute or ordinance, or subsection of a statute or ordinance, that requires a separate finding of fact or a separate plea before disposition and of which the defendant may be found guilty, whether filed as part of a multiple charge on a single summons, citation, or complaint or as a separate charge on a single summons, citation, or complaint. “Criminal cause” does not include separate violations of the same statute or ordinance, or subsection of the same statute or ordinance, unless each charge is filed on a separate summons, citation, or complaint.

2303.20(A)¹⁰ for the computerization of the court or clerk's office, R.C. 1901.261. R.C. 1901.262 further authorizes a municipal court to charge and collect "on the filing of each ... criminal action or proceeding" a fee for the implementation of dispute resolution procedures.

Various statutes thus authorize a municipal court to assess certain costs and fees against the county when a criminal prosecution brought in a municipal court for an alleged violation of state law results in the dismissal or acquittal of the defendant. When a municipal court assesses a statutorily authorized cost or fee against the county in a criminal proceeding, the county is required to pay that cost or fee.¹¹ See 1977 Op. Att'y Gen. No. 77-088. See generally *State ex rel. Beil v. Dota*, 168 Ohio St. 315, 322, 154 N.E.2d 634 (1958) ("[t]he interests of orderly government demand that respect and compliance be given to orders issued by courts possessed of jurisdiction of persons and subject matter. One who defies the public authority and willfully refuses his obedience, does so at his peril" (quoting *United States v. United Mine Workers of America*, 330 U.S. 258, 303 (1947))), cert. denied, 360 U.S. 912 (1959); *Bd. of Educ. v. Hamilton Classroom Teachers Ass'n*, 5 Ohio App. 3d 51, 53, 449 N.E.2d 26 (Butler County 1982) ("[a]n order issued by a court with jurisdiction must be obeyed until it is reversed by orderly and proper proceedings"); 1993 Op. Att'y Gen. No. 93-080 at 2-401 ("when an agency of the state is the subject of a court order, the agency may: (1) obey that order; (2) seek to have the order changed by the courts; or (3) disobey the order at its peril. An officer or employee of a state agency who disobeys or resists a court order directed at the agency may be subject to a contempt proceeding" (citations omitted)). Accordingly, a county must pay any cost or fee assessed against it by a municipal court in a criminal prosecution for an alleged violation of state law, provided the court is statutorily authorized to assess the cost or fee against the county.

Based on the foregoing, it is our opinion, and you are hereby advised as follows:

¹⁰ 1993 Op. Att'y Gen. No. 93-041 at 2-213 determined that "[t]he term 'cause of action,' as used in R.C. 2303.20(A), ... includes both civil and criminal proceedings."

¹¹ Whether it is appropriate for a municipal court to assess a statutorily authorized cost or fee against a party in a criminal prosecution is a question of fact that can not be decided by the Attorney General. See generally 1987 Op. Att'y Gen. No. 87-082 (syllabus, paragraph three) ("R.C. 109.14 does not authorize the Attorney General to decide questions of fact by means of an opinion"). See generally also *State v. Galbreath*, 138 Ohio App. 3d 559, 561, 741 N.E.2d 936 (Ottawa County 2000) ("[a] thorough review of the record of proceedings in the trial court reveals no evidence that a jury was sworn and began to serve in this case on March 30, 1999. Accordingly, we find that the trial court erred by ordering appellant to pay the costs of the jury summoned on March 30, 1999"); *State v. Powers*, 117 Ohio App. 3d 124, 128, 690 N.E.2d 32 (Fulton County 1996) (after conviction on a misdemeanor charge of reckless operation of a motor vehicle and acquittals on charges of assault and menacing, a sentencing court may assess against the defendant only those costs associated with the bench trial of the misdemeanor charge and not those costs incurred as a result of a jury trial on the charges of assault and menacing).

1. When a criminal prosecution brought in a municipal court for an alleged violation of state law results in the dismissal or acquittal of the defendant, the county pays the court costs. (1977 Op. Att'y Gen. No. 77-088, approved and followed; 1975 Op. Att'y Gen. No. 75-045 and 1961 Op. Att'y Gen. No. 2216, p. 271, questioned.)
2. A county must pay any cost or fee assessed against it by a municipal court in a criminal prosecution for an alleged violation of state law, provided the court is statutorily authorized to assess the cost or fee against the county.

Respectfully,

A handwritten signature in black ink, appearing to read "Jim Petro", with a stylized flourish at the end.

JIM PETRO
Attorney General