September 11, 2007

The Honorable William D. Mason
Cuyahoga County Prosecuting Attorney
Justice Center
Courts Tower
1200 Ontario Street
Cleveland, Ohio 44113

SYLLABUS: 2007-030

The additional court cost established by a board of county commissioners pursuant to R.C. 2949.093 is to be charged per moving violation adjudicated or otherwise processed by a municipal court in a case when a person is convicted of or pleads guilty to more than one moving violation in a case.

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
MARC DANN, ATTORNEY GENERAL

Opinions Section
30 E. Broad St., 15th Floor
Columbus, OH 43215-3400
Telephone: (614) 752-6417
Facsimile: (614) 466-0013
www.ag.state.oh.us

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OPINION NO. 2007-030

The Honorable William D. Mason
Cuyahoga County Prosecuting Attorney
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1200 Ontario Street
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Dear Prosecutor Mason:

You have requested an opinion whether the additional court cost established by a board of county commissioners pursuant to R.C. 2949.093 is to be charged per moving violation adjudicated or otherwise processed by a municipal court in a case or once per case when a person is convicted of or pleads guilty to more than one moving violation in a case.[1] In such a situation, the additional court cost is to be charged per moving violation adjudicated or otherwise processed by the municipal court.

Assessment of Court Costs by Courts

In order to answer your question, we must first examine the authority of courts to impose court costs. Court costs are fees and charges required by law to be paid to the courts for services

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[1] In Ohio a person may be charged with one or more moving violations in a case. *See generally* Ohio Sup. R. 2(A)(2) (as used in the Rules of Superintendence for the Courts of Ohio, a "case," means, among other things, a "charging instrument that charges a defendant with one or more violations of the law arising from the same act, transaction, or series of acts or transactions" filed in a municipal court); Ohio Traf. R. 2(A) ("'[t]raffic case' means any proceeding, other than a proceeding resulting from a felony indictment, that involves one or more violations of a law, ordinance, or regulation governing the operation and use of vehicles, conduct of pedestrians in relation to vehicles, or weight, dimension, loads or equipment, or vehicles drawn or moved on highways and bridges. 'Traffic case' does not include any proceeding that results in a felony indictment").

provided during the course of a criminal or civil proceeding. As explained in *Centennial Ins. Co. v. Liberty Mut. Ins. Co.*, 69 Ohio St. 2d 50, 50-51, 430 N.E.2d 925 (1982):

> "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 … and which the statutes authorize to be taxed and included in the judgment…. 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…." *State, ex rel. Commrs. of Franklin County, v. Guilbert* (1907), 77 Ohio St. 333, 338-339, [83 N.E. 80,] quoted, in part, with approval in *Benda v. Fana* (1967), 10 Ohio St. 2d 259, 262-263[, 227 N.E.2d 197].

Accord 1997 Op. Att'y Gen. No. 97-058 at 2-350. *See generally Black's Law Dictionary* 372 (8th ed. 2004) (defining "costs" as "[t]he charges or fees taxed by the court, such as filing fees, jury fees, courthouse fees, and reporter fees. — Also termed *court costs*…. The expenses of litigation, prosecution, or other legal transaction, esp. those allowed in favor of one party against the other"). A court thus may not impose a charge or fee as a court cost unless the authority to do so has been expressly granted to the court. *Centennial Ins. Co. v. Liberty Mut. Ins. Co.*, 69 Ohio St. 2d at 51, 430 N.E.2d 925; *see* 2005 Op. Att'y Gen. No. 2005-014 at 2-140 n.7; 1997 Op. Att'y Gen. No. 97-058 at 2-350. *See generally* 1984 Op. Att'y Gen. No. 84-088 at 2-304 (advising that the cost of a breathalyzer test may not properly be taxed against a defendant as a part of the court costs absent specific statutory authorization for imposing such as a court cost).

In Ohio there are numerous statutes authorizing various courts to impose varying charges and fees in specific situations in criminal and civil proceedings. *See, e.g.*, R.C. 311.17 (when a county sheriff performs a service specified in R.C. 311.17, the sheriff shall charge a fee, "which the court or its clerk shall tax in the bill of costs against the judgment debtor or those legally liable therefor for the judgment"); R.C. 1901.26 (authorizing municipal courts and legislative authorities of municipal corporations to establish a schedule of fees to be taxed as costs in civil, criminal, and traffic proceedings); R.C. 2301.24 ("[t]he compensation for transcripts of testimony requested by the prosecuting attorney during trial in criminal cases or by the trial judge, in either civil or criminal cases, and copies of decisions and charges furnished by direction of the court shall be paid from the county treasury, and taxed and collected as costs"); R.C. 2301.25 (costs of transcripts may be taxed as court costs); R.C. 2303.20 (setting forth the fees that a clerk of the court of common pleas may charge in a case); R.C. 2303.201 (setting forth additional fees that a clerk of the court of common pleas may charge in a case); R.C. 2303.21 (expenses of procuring a transcript of a judgment or proceeding or exemplification of a record shall be taxed in the bill of costs); R.C. 2335.02 (compensation of appraisers and arbitrators "shall be taxed in the costs of such cause"); R.C. 2335.05 (witness fees and mileage "shall be taxed in the bill of costs"); R.C. 2335.06 (witness fees and mileage in civil cases are "to be taxed in the bill of costs); R.C. 2335.08 (witness fees in criminal cases may be taxed as costs); R.C. 2335.09 (interpreter's fee is to be taxed in the bill of costs); R.C. 2335.11 (fees of magistrates and their officers, witness fees, and interpreter's fees shall be inserted in the judgment of

conviction); 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 otherwise); R.C. 2743.70 (authorizing a court to impose an additional court cost in felony and misdemeanor cases); R.C. 2947.06 (fees of psychologist or psychiatrist appointed by a court may be taxed as costs in the case); R.C. 2947.23(A)(2)(a) ("[i]f a jury has been sworn at the trial of a case, the fees of the jurors shall be included in the costs"); R.C. 2949.091 (authorizing a court to impose an additional court cost in criminal cases); R.C. 2949.14 (including in court costs the amount paid "for the arrest and return of the person on the requisition of the governor, or on the request of the governor to the president of the United States, or on the return of the fugitive by a designated agent").

Because the power to impose a charge or fee as a court cost must be statutorily granted to a court, the specific language of the statute authorizing the court to impose the charge or fee controls how the charge or fee shall be imposed. In other words, the manner in which a court imposes a court cost is determined from the statute authorizing that particular court to impose a specific charge or fee as a court cost. *See Centennial Ins. Co. v. Liberty Mut. Ins. Co.*, 69 Ohio St. 2d at 51, 430 N.E.2d 925 ("[t]oday, we reaffirm the principle that '[t]he subject of costs is one entirely of statutory allowance and control'" (quoting *State ex rel. Michaels v. Morse* 165 Ohio St. 599, 607, 138 N.E.2d 660 (1956))); *Sorin v. Bd. of Educ. of Warrensville Heights Sch. Dist.*, 46 Ohio St. 2d 177, 179, 347 N.E.2d 527 (1976) (same as previous parenthetical).

County Participation in a Criminal Justice Regional Information System

Let us now consider your specific question, which asks whether the additional court cost established by a board of county commissioners pursuant to R.C. 2949.093 is to be charged per moving violation adjudicated or otherwise processed by a municipal court in a case or once per case when a person is convicted of or pleads guilty to more than one moving violation in a case. R.C. 2949.093(A) authorizes a board of county commissioners of a county containing at least fifty-five law enforcement agencies to "elect to participate in a criminal justice regional information system,[2] either by creating and maintaining a new criminal justice regional information system or by participating in an existing criminal justice regional information system."[3] (Footnote added.) Funding for the county's participation in the system is obtained in the following manner:

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[2] For purposes of R.C. 2949.093, a "criminal justice regional information system" is "a governmental computer system that serves as a cooperative between political subdivisions in a particular region for the purpose of providing a consolidated computerized information system for criminal justice agencies in that region." R.C. 2949.093(H)(3).

[3] A board of county commissioners may not elect to participate in a criminal justice regional information system unless the board has created in the county treasury a criminal justice regional information fund pursuant to R.C. 305.28. R.C. 2949.093(B). *See generally* R.C.

> A county that elects to participate in a criminal justice regional information system shall obtain revenues to fund its participation by establishing an additional court cost not exceeding five dollars to be imposed for moving violations[4] that occur in that county. The board of county commissioners of that county shall establish the amount of the additional court cost by resolution. The board shall give written notice to all courts located in that county that adjudicate or otherwise process moving violations that occur in that county of the county's election to participate in the system and of the amount of the additional court cost. (Footnote added.)

R.C. 2949.093(C).[5]

When a municipal court receives notice of an additional court cost established by a board of county commissioners pursuant to R.C. 2949.093, the court is required to do the following:

> (C) …. Upon receipt of such notice, each recipient court shall impose that amount as an additional court cost for all moving violations the court adjudicates or otherwise processes, in accordance with divisions (D) and (E) of this section.
>
> (D)(1) The court in which any person is convicted of or pleads guilty to any moving violation that occurs in a county that has elected to participate in a criminal justice regional information system shall impose the sum established by the board pursuant to division (C) of this section as costs in the case in addition to

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305.28 ("[i]f a board of county commissioners by resolution elects to participate in a criminal justice regional information system as provided in [R.C. 2949.093], the board also shall create in its county treasury a criminal justice regional information fund").

[4] As used in R.C. 2949.093, a "moving violation" means

> any violation of any statute or ordinance, other than [R.C. 4513.263] or an ordinance that is substantially equivalent to that section, that regulates the operation of vehicles, streetcars, or trackless trolleys on highways or streets or that regulates size or load limitations or fitness requirements of vehicles. "Moving violation" does not include the violation of any statute or ordinance that regulates pedestrians or the parking of vehicles.

R.C. 2949.093(H)(1).

[5] In accordance with the authority granted to a board of county commissioners under R.C. 2949.093(C), the Cuyahoga County Board of Commissioners has adopted a resolution that requires the courts in the county to impose an additional court cost of five dollars when the courts adjudicate or otherwise process a moving violation that occurs in the county.

> any other court costs that the court is required by law to impose upon the offender. The court shall not waive the payment of the additional court cost established by the board pursuant to division (C) of this section unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender.
>
> All such money collected during a month shall be transmitted on the first business day of the following month by the clerk of the court to the county treasurer of the county in which the court is located and thereafter the county treasurer shall deposit the money in that county's criminal justice regional information fund.
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> ….
>
> (E) Whenever a person is charged with any offense that is a moving violation and posts bail, the court shall add to the amount of the bail the set sum required to be paid by division (D)(1) of this section. The clerk of the court shall retain that set sum until the person is convicted, pleads guilty, forfeits bail, is found not guilty, or has the charges dismissed. If the person is convicted, pleads guilty, or forfeits bail, the clerk shall transmit the set sum to the county treasurer, who shall deposit it in the county criminal justice regional information fund. If the person is found not guilty or the charges are dismissed, the clerk shall return the set sum to the person.

R.C. 2949.093.[6]

Moneys collected by a municipal court under R.C. 2949.093 and deposited in the county criminal justice regional information fund are used "to pay the costs [the county] incurs in creating and maintaining a new criminal justice regional information system or to pay the costs [the county] incurs in participating in an existing criminal justice regional information system," unless the board of county commissioners determines that there is a surplus in the fund. R.C. 2949.093(G). If a surplus is declared, the county "may expend the surplus only to pay the costs [the county] incurs in improving the law enforcement computer technology of local law enforcement agencies located in [the] county." R.C. 2949.093(G)(2). *See generally* R.C. 305.28 ("[a]ll money deposited into [a criminal justice regional information] fund shall be used only as provided in [R.C. 2949.093]").

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[6] A person may not be placed or held in a detention facility, as defined in R.C. 2921.01, for failing to pay the additional court cost or bail that is required to be paid by R.C. 2949.093. R.C. 2949.093(F).

The Additional Court Cost of R.C. 2949.093 Is Charged for All Moving Violations Adjudicated or Otherwise Processed

A review of R.C. 2949.093 discloses that a municipal court is required to impose the additional court cost established by a board of county commissioners pursuant to R.C. 2949.093 "for *all* moving violations the court adjudicates or otherwise processes." R.C. 2949.093(C) (emphasis added). The use of the word "all" plainly and unequivocally indicates that a municipal court must impose the additional court cost established by R.C. 2949.093 whenever the court adjudicates or otherwise processes a moving violation. *See generally Black's Law Dictionary* 74 (6th ed. 1990) (defining the word "all" as "the whole of—used with a singular noun or pronoun, and referring to amount, quantity, extent, duration, quality, or degree. The whole number or sum of—used collectively, with a plural noun or pronoun expressing an aggregate. Every member of individual component of; each one of—used with a plural noun. In this sense, all is used generically and distributively. 'All' refers rather to the aggregate under which the individuals are subsumed than to the individuals themselves"). *See generally also* R.C. 1.42 ("[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage"). Moreover, no language in R.C. 2949.093 or elsewhere in the Revised Code prohibits a municipal court from imposing the court cost established by a board of county commissioners pursuant to R.C. 2949.093 more than once in a case when the court adjudicates or otherwise processes multiple moving violations in the case.

Finally, it is significant to note that when the General Assembly intends for a court cost to be assessed only once per case, rather than per violation in a case, it has clearly conveyed that intention. For example, R.C. 2743.70 and R.C. 2949.091 require a court, in which any person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, to impose a specific sum of money "as costs in the case."[7] 1991 Op. Att'y Gen. No.

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[7] R.C. 2743.70(A)(1) provides, in part:

> The court, in which any person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, shall impose the following sum *as costs in the case* in addition to any other court costs that the court is required by law to impose upon the offender:
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> (a) Thirty dollars, if the offense is a felony;
>
> (b) Nine dollars, if the offense is a misdemeanor. (Emphasis added.)

R.C. 2949.091(A)(1) similarly states, as follows:

> The court, in which any person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, shall impose the sum of fifteen dollars *as costs in the case* in addition to any other court costs that the court is required by law to impose upon the offender. (Emphasis added.)

91-022 examined the language of R.C. 2743.70(A)(1) and R.C. 2949.091(A)(1) and concluded that the court costs imposed by these two statutes are to be charged per case, rather than per offense. In reaching this conclusion, the opinion at 2-118 explained as follows:

> The language of R.C. 2743.70(A)(1) and R.C. 2949.091(A)(1) … unambiguously discloses that the General Assembly's intention in enacting these sections was to provide for the imposition of *a specific sum of money as costs in any case* in which a person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation. I note that neither R.C. 2743.70 nor R.C. 2949.091 sets forth a definition for the term "case." Terms not statutorily defined are to be accorded their common or ordinary meaning. *Black's Law Dictionary* 215 (6th ed. 1990) defines the term "case" as "an aggregate of facts which furnishes occasion for the exercise of the jurisdiction of a court of justice." It is clear, therefore, that the costs mandated in R.C. 2743.70 and R.C. 2949.091 are to be imposed when an aggregate of facts furnishing a court the opportunity to exercise its jurisdiction results in a person being convicted of or pleading guilty to any offense other than a traffic offense that is not a moving violation.
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> In addition to the foregoing, I note that prior to and subsequent to the enactment of R.C. 2743.70 and R.C. 2949.091, it has been the continual practice in Ohio for offenses to be joined in one case for purposes of facilitating the administration of justice. Hence, it is a commonly acknowledged and statutorily recognized practice to consolidate two or more offenses charged against a person into one case.
>
> *[Even though] the General Assembly was cognizant of the fact that situations would arise in which a person would be convicted of or plead guilty to more than one offense in a case when it enacted R.C. 2743.70 and R.C. 2949.091[,] … [it] made no attempt, through the language of R.C. 2743.70 and R.C. 2949.091, to indicate that the costs mandated by these sections were conditioned upon the number of offenses of which a person was convicted or to which he plead guilty in a single case*. Rather, language set forth in these two sections indicates the contrary. (Citations omitted and emphasis added.)

See generally 1982 Op. Att'y Gen. No. 82-050 (syllabus, paragraph two) ("[t]he costs imposed by Section 169 (uncodified) of Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981) and Section 167 (uncodified) of Am. Sub. H.B. 694, as amended by Section 60 (uncodified) of Am. Sub. H.B. 552, 114th Gen. A. (1981) (eff. Nov. 24, 1981) are to be charged on a per case basis").[8]

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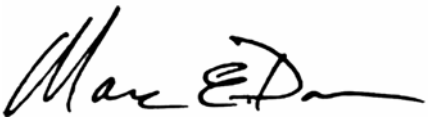
[8] Language substantially similar to that set forth in uncodified sections 169 and 167 of Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981) now appears in R.C. 2743.70(A)(1) and R.C. 2949.091(A)(1), respectively.

Unlike R.C. 2743.70 and R.C. 2949.091, the language of R.C. 2949.093 explicitly conditions the imposition of the additional court cost established by a board of county commissioners upon the number of moving violations a municipal court adjudicates or otherwise processes in a case. R.C. 2949.093(C). Thus, the inclusion of language in R.C. 2949.093(C) requiring a municipal court to impose the additional court cost established by a board of county commissioners pursuant to R.C. 2949.093 "for all moving violations the court adjudicates or otherwise processes" evinces that the General Assembly intended for such costs to be charged per moving violation adjudicated or otherwise processed by a court in a case when a person is convicted of or pleads guilty to more than one moving violation in the case. *See generally Metro. Sec. Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81 (1927) ("[h]aving used certain language in the one instance and wholly different language in the other, it will rather be presumed that different results were intended"). If the General Assembly had not intended such a result, it would not have used the language it did in R.C. 2949.093(C). *See generally NACCO Indus., Inc. v. Tracy*, 79 Ohio St. 3d 314, 316, 681 N.E.2d 900 (1997) ("Congress is generally presumed to act intentionally and purposely when it includes particular language in one section of a statute but omits it in another"); *State ex rel. Cleveland Elec. Illum. Co. v. City of Euclid*, 169 Ohio St. 476, 479, 159 N.E.2d 756 (1959) ("the General Assembly is not presumed to do a vain or useless thing, and that when language is inserted in a statute it is inserted to accomplish some definite purpose").

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that the additional court cost established by a board of county commissioners pursuant to R.C. 2949.093 is to be charged per moving violation adjudicated or otherwise processed by a municipal court in a case when a person is convicted of or pleads guilty to more than one moving violation in a case.

Respectfully,



MARC DANN
Attorney General