June 17, 1998

OPINION NO. 98-021

The Honorable Robert D. Rinfret
Holmes County Prosecuting Attorney
91 South Monroe Street
Millersburg, Ohio 44654

Dear Prosecutor Rinfret:

We have received your request for an opinion concerning the collection of fees and costs by a juvenile court. Specifically, you wish to know whether, in cases in which the Ohio Rules of Juvenile Procedure apply,[1] a juvenile court may tax as costs and collect from a party the expenses of the county sheriff in serving subpoenas issued by the court and the fees of a witness subpoenaed by the court.

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[1] Except as provided in Ohio R. Juv. P. 1(C), the Ohio Rules of Juvenile Procedure prescribe the procedure to be followed in all juvenile courts of this state in all proceedings coming within the jurisdiction of such courts. Ohio R. Juv. P. 1(A). Pursuant to Ohio R. Juv. P. 1(C), the Ohio Rules of Juvenile Procedure do not apply in the following instances:

> (1) Upon appeal to review any judgment, order, or ruling; (2) Upon the trial of criminal actions; (3) Upon the trial of actions for divorce, annulment, legal separation, and related proceedings; (4) In proceedings to determine parent-child relationships, provided, however that appointment of counsel shall be in accordance with Rule 4(A) of the Rules of Juvenile Procedure; (5) In the commitment of the mentally ill and mentally retarded; (6) In proceedings under section 2151.85 of the Revised Code to the extent that there is a conflict between these rules and section 2151.85 of the Revised Code.

As indicated in the materials submitted in conjunction with your letter, the general authority of a juvenile court to tax and collect costs in juvenile court cases is set forth in R.C. 2151.54, which provides in relevant part:

> *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 2949.091[2] 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. (Emphasis and 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." 1997 Op. Att'y Gen. No. 97-024 at 2-139. *See generally* 1984 Op. Att'y Gen. No. 84-088 at 2-303 ("the power to assess costs must be expressly granted by statute").

Pursuant to R.C. 311.17, a court of common pleas is authorized to tax as costs the fees of the county sheriff in serving subpoenas. R.C. 311.17 provides, in part:

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[2] Pursuant to R.C. 2743.70(A)(2) and R.C. 2949.091(A)(2), a juvenile court is required to impose a specified 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.

> For the services specified in this section, the sheriff shall charge the following fees, which the court or clerk thereof shall tax in the bill of costs against the judgment debtor or those legally liable therefor:
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> (A) For the service and return of the following writs and orders:
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> ….
>
> (8) Subpoena, for each person named in the writ, if in a civil case three dollars, if in a criminal case one dollar;
>
> ….
>
> (B) In addition to the fee for service and return, the sheriff may charge:
>
> (1) On each summons, writ, order, or notice, a fee of fifty cents per mile for the first mile, and twenty cents per mile for each additional mile, going and returning, actual mileage to be charged on each additional name.
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> ….
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> When any of the foregoing services are rendered by an officer or employee, whose salary or per diem compensation is paid by the county, the legal fees provided for such service in this section shall be taxed in the costs in the case, and when such fees are collected they shall be paid into the general fund of the county.

Additionally, R.C. 2335.06 and R.C. 2335.08 authorize a court of common pleas to tax as costs the fees of a witness subpoenaed by the court.

Thus, a court of common pleas is authorized to tax as costs and collect from a party the fees of the county sheriff in serving subpoenas issued by the court, R.C. 311.17, and the fees of witnesses subpoenaed by the court, R.C. 2335.06; R.C. 2335.08. Because a juvenile court may, pursuant to R.C. 2151.54, tax as costs and collect from a party the same fees as are allowed the clerk of the court of common pleas for similar services, a juvenile court may tax as costs and collect from a party the fees of the county sheriff in serving subpoenas issued by the court and the fees of witnesses subpoenaed by the court.

Similarly, Ohio R. Juv. P. 17(B), which controls the issuance of subpoenas by a juvenile court, authorizes the payment of the costs and fees associated with a subpoena issued by a juvenile court for a witness. In this regard, Ohio R. Juv. P. 17(B) reads:

> The court shall order at any time that a subpoena be issued for service on a named witness upon an ex parte application of a party and upon a satisfactory showing that the presence of the witness is necessary and that the party is financially unable to pay the witness fees required by division (C) of this rule.[3] *If*

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[3] Ohio R. Juv. P. 17(C) provides as follows:

> *the court orders the subpoena to be issued, the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner that similar costs and fees are paid in* [*the*] *case of a witness subpoenaed in behalf of the state in a criminal prosecution*. (Emphasis and footnote added.)

Accordingly, pursuant to Ohio R. Juv. P. 17(B), costs incurred by a county sheriff in serving a subpoena issued by a juvenile court and the fees of the witness so subpoenaed are to be paid in the same manner that similar costs and fees are paid in the case of a witness subpoenaed in behalf of the state in a criminal prosecution.

The manner in which the fees of a witness subpoenaed on behalf of the state in a criminal prosecution are paid is set forth in R.C. 2335.08. This statute provides as follows:

> Each witness attending, under recognizance or subpoena issued by order of the prosecuting attorney or defendant, before the grand jury or any court of record, in criminal causes, shall be allowed the same fees as provided by section 2335.06 of the Revised Code[4] in civil causes, to be taxed in only one cause when such witness is attending in more causes than one on the same days, unless otherwise directed by special order of the court. When certified to the county auditor by the clerk of the court, *such fees shall be paid from the county treasury,*

> A subpoena may be served by a sheriff, bailiff, coroner, clerk of court, constable, probation officer, or a deputy of any, by an attorney or the attorney's agent, or by any person designated by order of the court who is not a party and is not less than eighteen years of age. Service of a subpoena upon a person named in the subpoena shall be made by delivering a copy of the subpoena to the person, by reading it to him or her in person, or by leaving it at the person's usual place of residence, and by tendering to the person upon demand the fees for one day's attendance and the mileage allowed by law. The person serving the subpoena shall file a return of the subpoena with the clerk. If the witness being subpoenaed resides outside the county in which the court is located, the fees for one day's attendance and mileage shall be tendered without demand. The return may be forwarded through the postal service or otherwise.

[4] Pursuant to R.C. 2335.06 each witness in a civil case shall receive twelve dollars for each half day's attendance at a court of record, mayor's court, or before a person authorized to take depositions and ten cents for each mile necessarily traveled to and from his place of residence to the place of giving his testimony.

> *and except as to the grand jury, taxed in the bill of costs*. Each witness attending before a judge of a county court, magistrate, or mayor, under subpoena in criminal cases, shall be allowed the fees provided by such section for witnesses in the court of common pleas. *In state cases such fees shall be paid out of the county treasury*, and in ordinance cases they shall be paid out of the treasury of the municipal corporation, upon the certificates of the judge or magistrate, *and they shall be taxed in the bill of costs.*
>
> *When the fees enumerated by this section have been collected from the judgment debtor, they shall be paid to the public treasury from which such fees were advanced*. (Emphasis and footnote added.)

Thus, under R.C. 2335.08, the fees of a witness subpoenaed on behalf of the state in a criminal prosecution are paid from the county treasury, and then taxed as costs in the case.

In addition, the fees of a county sheriff in serving a subpoena on behalf of the state in a criminal prosecution are paid from the county treasury, and then taxed as costs and collected from the judgment debtor. Under R.C. 325.07, the actual transportation expense, telephone tolls, and any other necessary transportation expense incurred by the county sheriff in serving a subpoena on a witness on behalf of the state in a criminal prosecution are to be paid from the allowance authorized therefor by the board of county commissioners. 1989 Op. Att'y Gen. No. 89-086; *see also* R.C. 2151.19 (when a subpoena is issued to a county sheriff, the expense in serving the same shall be paid by the county in the manner prescribed for the payment of the sheriff, deputies, assistants, and other employees). Moreover, R.C. 311.17 authorizes a court to tax as costs the fees of the county sheriff in serving subpoenas. Accordingly, pursuant to R.C. 325.07 and R.C. 311.17, the fees of the county sheriff in serving a subpoena on behalf of the state in a criminal prosecution are paid from the county treasury, and then taxed as costs in the case.

As stated above, the fees incurred by the county sheriff in serving a subpoena issued by a juvenile court and the fees of a witness so subpoenaed are to be paid in the same manner that the similar costs and fees are paid in the case of a witness subpoenaed on behalf of the state in a criminal prosecution. Ohio R. Juv. P. 17(B). Because the fees of a county sheriff in serving a subpoena on behalf of the state in a criminal prosecution and the fees of a witness so subpoenaed are paid from the county treasury, and then taxed as costs in the case, *see* R.C. 311.17; R.C. 325.07; R.C. 2335.08, it follows that, pursuant to Ohio R. Juv. P. 17(B), the fees incurred by the county sheriff in serving a subpoena issued by a juvenile court and the fees of a witness so subpoenaed are to be paid from the county treasury, and then taxed as costs in the case.

An examination of R.C. 2151.54 and Ohio R. Juv. P. 17(B) discloses that both authorize a juvenile court to tax as costs and collect from a party the fees of the county sheriff in serving subpoenas issued by the court and the fees of witnesses subpoenaed by the court. However, because the language used in R.C. 2151.54 and Ohio R. Juv. P. 17(B) is not identical, we must examine the legal relationship between R.C. 2151.54 and Ohio R. Juv. P. 17(B) in order to

answer completely your specific question.

Article IV, § 5(B) of the Ohio Constitution reads, in part, as follows:

> The supreme court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right…. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Pursuant to this grant of authority, the Ohio Supreme Court has promulgated the Ohio Rules of Juvenile Procedure. Rules of juvenile procedure promulgated pursuant to Ohio Const. art. IV, § 5(B) must be procedural in nature. *See In re Brofford*, 83 Ohio App. 3d 869, 873, 615 N.E.2d 1120, 1122 (Franklin County 1992); *In re Vickers Children*, 14 Ohio App. 3d 201, 204, 470 N.E.2d 438, 442 (Butler County 1983). Where a conflict arises between a rule of juvenile procedure and a statute, the rule of juvenile procedure will take precedence over the conflicting statute on matters of procedure. *In re Brofford*, 83 Ohio App. 3d at 873, 615 N.E.2d at 1122; *In re Vickers Children*, 14 Ohio App. 3d at 204, 470 N.E.2d at 442. Conversely, a rule of juvenile procedure may not abridge, enlarge, or modify any substantive right and the statute supersedes the rule of juvenile procedure on matters of substantive law. Ohio Const. art. IV, § 5(B); *In re Brofford*, 83 Ohio App. 3d at 873, 615 N.E.2d at 1122.

Accordingly, if R.C. 2151.54 and Ohio R. Juv. P. 17(B) are in conflict, Ohio R. Juv. P. 17(B) supersedes R.C. 2151.54 on procedural matters, and R.C. 2151.54 supersedes Ohio R. Juv. P. 17(B) on substantive issues. *See* Ohio Const. art. IV, § 5(B); *In re Brofford; In re Vickers Children.* However, if no conflict exists between R.C. 2151.54 and Ohio R. Juv. P. 17(B), then both are applicable. *See State v. Heyden*, 81 Ohio App. 3d 272, 276, 610 N.E.2d 1067, 1069 (Summit County 1992); *see, e.g., State v. Tate*, 59 Ohio St. 2d 50, 54, 391 N.E.2d 738, 740 (1979), *cert. denied*, 444 U.S. 967 (1979).

As stated above, both R.C. 2151.54 and Ohio R. Juv. P. 17(B) empower a juvenile court to tax as costs and collect from a party the fees of the county sheriff in serving subpoenas issued by the court and the fees of witnesses subpoenaed by the court. However, R.C. 2151.54 states that "[n]o fees or costs shall be taxed in cases of delinquent, unruly, dependent, abused, or neglected children except as required by section 2743.70 or 2949.091 of the Revised Code or when specifically ordered by the court." There is no similar limitation in Ohio R. Juv. P. 17(B). Thus, R.C. 2151.54 and Ohio R. Juv. P. 17(B) are in conflict to the extent that R.C. 2151.54 prohibits a juvenile court from taxing as costs and collecting from a party fees in cases of delinquent, unruly, dependent, abused, or neglected children except when specifically ordered by the court. Therefore, we must determine whether the above quoted provision of R.C. 2151.54 is substantive or procedural.

In Ohio, substantive law is that which creates, defines, and regulates rights, while procedural law prescribes the methods of enforcing those rights. *State ex rel. City of Columbus*

v. Boyland, 58 Ohio St. 2d 490, 492, 391 N.E.2d 324, 326 (1979); *Krause v. State*, 31 Ohio St. 2d 132, 145, 285 N.E.2d 736, 744 (1972), *appeal dismissed*, 409 U.S. 1052 (1972);[5] 1979 Op. Att'y Gen. No. 79-059 at 2-201. As stated in *Krause v. State*, 31 Ohio St. 2d at 145, 285 N.E.2d at 744:

> The word "substantive," as used in Section 5(B) of Article IV, is in contradistinction to the words "adjective" or "procedural" which pertain to the method of enforcing rights or obtaining redress. "Substantive" means that body of law which creates, defines and regulates the rights of the parties. (See Black's Law Dictionary.) The word substantive refers to common law, statutory and constitutionally recognized rights.

Accord State ex rel. City of Columbus v. Boyland, 58 Ohio St. 2d at 492, 391 N.E.2d at 326; 1979 Op. Att'y Gen. No. 79-059 at 2-201. However, "[t]he application of the substantive-procedural distinction to a statute or rule is not without difficulty, as the substantive and procedural laws are not always mutually exclusive." *State v. Slatter*, 66 Ohio St. 2d 452, 454-55, 423 N.E.2d 100, 102 (1981).

With this background in mind, we turn now to an examination of the provision of R.C. 2151.54 that pertains to the taxing and collecting of fees by a juvenile court in cases of delinquent, unruly, dependent, abused, or neglected children. R.C. 2151.54 clearly mandates that, except as required by R.C. 2743.70 or R.C. 2949.091 or when specifically ordered by the juvenile court, "[n]o fees or costs shall be taxed in cases of delinquent, unruly, dependent, abused, or neglected children." The General Assembly has unequivocally stated its intention that a juvenile court may not tax as costs and collect from a party fees in cases of delinquent, unruly, dependent, abused, or neglected children, except in the limited situations set forth in R.C. 2151.54. *See generally State v. Elam*, 68 Ohio St. 3d 585, 587, 629 N.E.2d 442, 444 (1994) ("[t]he polestar of statutory interpretation is legislative intent, which a court best gleans from the words the General Assembly used and the purpose it sought to accomplish"). R.C. 2151.54 thus prohibits a juvenile court from taxing as costs in cases of delinquent, unruly, dependent, abused, or neglected children fees that it may ordinarily require a party to pay.

By prohibiting a juvenile court from taxing as costs and collecting from a party fees in the aforementioned cases, the General Assembly has statutorily guaranteed that a person will not be required to pay any fees in a juvenile court in such cases, except as required in R.C. 2743.70 and R.C. 2949.091 or when the court orders the individual to pay the fees due in the case. The

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[5] *Krause v. State*, 31 Ohio St. 2d 132, 285 N.E.2d 736 (1972), *appeal dismissed*, 409 U.S. 1052 (1972) was overruled in part on other grounds by *Schenkolewski v. Cleveland Metroparks Sys.*, 67 Ohio St. 2d 31, 426 N.E.2d 784 (1981).

General Assembly thus has granted an individual a statutory right not to be assessed court costs in such cases unless the court orders the individual to pay fees in a case. Accordingly, R.C. 2151.54 creates, defines, and regulates the rights of an individual in these cases.

As indicated above, a statute that creates, defines, or regulates an individual's rights is substantive. Therefore, it is our view that the language of R.C. 2151.54 that prohibits a juvenile court from taxing as costs and collecting from a party fees and costs in these articulated cases is substantive, and takes precedence over language to the contrary in Ohio R. Juv. P. 17(B). As a result, it must be concluded that, pursuant to R.C. 2151.54, the fees of a county sheriff in serving subpoenas issued by a juvenile court and the fees of witnesses subpoenaed by the court may not be taxed as costs and collected from a party in cases of delinquent, unruly, dependent, abused, or neglected children, except when specifically ordered by the court.

This conclusion is in accord with 1997 Op. Att'y Gen. No. 97-024, which addressed, *inter alia*, whether a juvenile court has the authority to impose and collect court costs from parties to actions that are filed in the juvenile court. 1997 Op. Att'y Gen. No. 97-024 determined that:

> 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.

Id. (syllabus, paragraph one). Although 1997 Op. Att'y Gen. No 97-024 did not discuss the provisions of Ohio R. Juv. P. 17(B) in relation to R.C. 2151.54, it is reasonable to infer from the conclusion reached therein that an individual has a right under R.C. 2151.54 not to be taxed costs by a juvenile court in cases of delinquent, unruly, dependent, abused, or neglected children, except in the limited situations set forth in R.C. 2151.54.

As a final matter, materials submitted in connection with your letter suggest that 1989 Op. Att'y Gen. No. 89-086 determined that R.C. 2151.54 prohibits a juvenile court from taxing as costs and collecting from a party the travel expenses of the county sheriff in serving subpoenas issued by the court. 1989 Op. Att'y Gen. No. 89-086 did not primarily address, however, the authority of a juvenile court to tax as costs and collect from a party the travel expenses of the county sheriff in serving subpoenas. Instead, the opinion addressed a situation in which the county sheriff submitted statements for those expenses to the juvenile court and requested the court to remit the corresponding payments to the sheriff's office. The juvenile court refused to make the requested payments, and cited as support therefor R.C. 2151.54.

In determining that the travel expenses of a county sheriff in serving subpoenas issued by a juvenile court must be paid out of the monthly allowance that is made available therefor by the

board of county commissioners under R.C. 325.07, 1989 Op. Att'y Gen. No. 89-086 reasoned at 2-410 as follows:

> [U]nder R.C. 325.07, the actual transportation expense, telephone tolls, and any other necessary transportation expense incurred by the sheriff in serving civil processes and subpoenaing witnesses in civil and criminal cases shall be paid from the allowance authorized therefor by the board of county commissioners.
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> It is a well-established principle of statutory construction that plain and unambiguous statutory provisions are to be applied, and not interpreted. Applying that principle of statutory construction in this instance, I am of the opinion that expenses incurred by the county sheriff in serving summonses, warrants, citations, subpoenas, writs, and other papers in connection with cases that are filed in juvenile court shall, pursuant to R.C. 2151.19, be paid out of the monthly allowance made to the sheriff by the board of county commissioners under R.C. 325.07, and not taxed and collected by the juvenile court as fees or costs under R.C. 2151.54. R.C. 2151.19 states clearly and unambiguously that the expense incurred by the sheriff in serving summonses, warrants, citations, subpoenas, and other writs of the juvenile court shall be paid by the county "in the manner prescribed for the payment of sheriffs." In turn, R.C. 325.07 states that the board of county commissioners "shall allow the sheriff his actual transportation expense and telephone tolls expended in serving civil processes and subpoenaing witnesses in civil and criminal cases," and "may allow any other necessary transportation expense for the proper administration of the duties of [the sheriff's] office." R.C. 325.07 makes no exception to this directive for cases that are filed and pending in the juvenile court. It follows, therefore, that the expenses of the sheriff at issue here shall, pursuant to R.C. 2151.19, be paid out of the monthly allowance that is made available therefor by the board of county commissioners under R.C. 325.07. Such expenses shall not be taxed and collected by the juvenile court as fees or costs under R.C. 2151.54. (Citations omitted.)

1989 Op. Att'y Gen. No. 89-086 thus concluded that the travel expenses of a county sheriff in serving subpoenas issued by a juvenile court must be paid out of the monthly allowance that is made available therefor by the board of county commissioners under R.C. 325.07. Because R.C. 325.07 authorizes the payment of a county sheriff's travel expenses from the county treasury, a sheriff is not entitled to payment of these expenses from a juvenile court. The opinion further indicates that such expenses may not be taxed and collected by the juvenile court as fees or costs under R.C. 2151.54, and paid over by the court to the county sheriff.

The factual circumstances presented in 1989 Op. Att'y Gen. No. 89-086 were such that the opinion confined its examination to the authority of a county sheriff to collect from the juvenile court the travel expenses that the sheriff incurred in serving subpoenas issued by the court. Resolution of this question did not require the Attorney General to make a determination about the authority of a juvenile court to tax these expenses as costs and collect them from a

party before the court. Thus, the opinion's statement that "[s]uch expenses shall not be taxed and collected by the juvenile court as fees or costs under R.C. 2151.54" was not essential to the resolution of the question presented to the Attorney General at that time. Notwithstanding this statement, it is apparent that, 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 such expenses as costs. In cases of delinquent, unruly, dependent, abused, or neglected children, the court shall tax and collect such expenses as costs when the court specifically orders them to be taxed and collected.

Based on the foregoing, it is my opinion, and you are hereby advised that, in juvenile court cases in which the Ohio Rules of Juvenile Procedure apply, Ohio R. Juv. P. 17(B) grants a juvenile court the authority to tax as costs and collect from a party the fees of the county sheriff in serving subpoenas issued by the court and the fees of witnesses subpoenaed by the court. However, pursuant to R.C. 2151.54, such fees may not be taxed as costs and collected by a juvenile court in cases of delinquent, unruly, dependent, abused, or neglected children except when specifically ordered by the court. (1997 Op. Att'y Gen. No. 97-024, approved and followed; 1989 Op. Att'y Gen. No. 89-086, clarified.)

Respectfully,

BETTY D. MONTGOMERY
Attorney General

June 17, 1998

The Honorable Robert D. Rinfret
Holmes County Prosecuting Attorney
91 South Monroe Street
Millersburg, Ohio 44654

SYLLABUS: 98-021

In juvenile court cases in which the Ohio Rules of Juvenile Procedure apply, Ohio R. Juv. P. 17(B) grants a juvenile court the authority to tax as costs and collect from a party the fees of the county sheriff in serving subpoenas issued by the court and the fees of witnesses subpoenaed by the court. However, pursuant to R.C. 2151.54, such fees may not be taxed as costs and collected by a juvenile court in cases of delinquent, unruly, dependent, abused, or neglected children except when specifically ordered by the court. (1997 Op. Att'y Gen. No. 97-024, approved and followed; 1989 Op. Att'y Gen. No. 89-086, clarified.)