

**OPINION NO. 65-155****Syllabus:**

Under Section 4507.40, Revised Code, when the Registrar of Motor Vehicles applies to a Municipal Court or a County Court for an order requiring a person to appear and show cause why his driving privileges should not be suspended, and the action fails for want of jurisdiction, the costs incurred shall be paid out of the county treasury of the county in which the proceedings were held.

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To: Edwin T. Hofstetter, Geauga County Pros. Atty., Chardon, Ohio  
By: William B. Saxbe, Attorney General, August 24, 1965

Your request for my opinion reads as follows:

"This office has recently been contacted by the Board of Commissioners to advise them as to the legality or the authority for the payment of Municipal Court costs incurred under authority of O. R. C. 4507.40 (K).

"In the cases in question, the Registrar's Office has notified the Prosecuting Attorney and the Municipal Court of this county concerning the defendant in each case, who was believed to be resident of this county. During the process of docketing the case, and after an attempt has been made by the Bailiff to serve notice of hearing, it has been discovered that the defendant resides outside of the jurisdiction of the Court, namely in another county. In these instances it has been necessary for the Court, with the assistance of the Prosecuting Attorney, to return the Registrar's notification and records to the Registrar for handling in another county. During this process certain Municipal Court costs have been incurred.

"Under Section 4507.40 (K) the costs are chargeable either to the person who has failed to show cause why his driving privileges should not be suspended, or to the county treasury of the county, in the event the person has shown cause why his driving privileges should not be suspended. Where costs have been incurred and there has not been a determination that affects the person charged, because of want of jurisdiction, please advise to whom the court costs shall be charged. It is the feeling of the Municipal Court that these costs are chargeable to the General Fund of the county. It is the consensus of the Board of Commissioners that they have no obligation in the matter, and have sought my thinking on the matter. Your assistance in this matter will be greatly appreciated."

Section 4507.40, Revised Code, states in part as follows:

"(K) When, upon determination of the registrar, any person has charged against him a total of not less than 12 points within a period of two years from the date of the first conviction within said two-year period, the registrar shall, within thirty days from the date of the last such convic-

tion, notify the prosecuting attorney of the county where such person resides and apply to the municipal court or the county court, or in case such person is a minor to the juvenile court, in whose jurisdiction such person resides for an order requiring such person to appear with his operator's or chauffeur's license at a specified time and place not later than thirty days after the issuance of the order to show cause why his driving privileges should not be suspended for a period of time determined by the number of previous suspensions under this section as follows:

" \* \* \* \* \*"

"In hearing the matter and determining whether such person has shown cause why his driving privileges should not be suspended, the court shall decide such issue upon the record certified by the registrar and such additional relevant, competent, and material evidence as either the registrar or the person whose license is sought to be suspended submits.

"In such proceedings the registrar shall be represented by the prosecuting attorney of the county where such person resides.

"If the court finds from the evidence submitted that such person has failed to show cause why his driving privileges should not be suspended then the court shall assess the cost of such proceeding against such person and shall impose the suspension provided in division (K) or withhold such suspension, or part thereof, and provide such conditions or probation as the court deems proper. If the court finds that such person has shown cause why his driving privileges should not be suspended the cost of the proceedings shall be paid out of the county treasury of the county in which the proceedings were held.

" \* \* \* \* \*"

A reading of the above cited statutes does not specifically provide for the payment of costs incidental to the procedure set forth in Section 4507.40, Revised Code, in the instance when the proceeding fails for want of jurisdiction when the person sought to show cause does not appear.

I assume from the facts set forth in your letter of request that the Registrar of Motor Vehicles has applied to the Municipal Court for an order requiring a person who has a total of not less than twelve points charged against him within a two year period. I further assume that this Court

has issued an order for this person to appear, and the Court thereafter discovers that it lacks jurisdiction.

My research does not reveal any other statute or authority dealing with the matter of payment of costs in the circumstances about which you inquire. It becomes imperative that a determination be made of the legislative intent in the enactment of Section 4507.40, supra. It has long been the general rule that courts will consider the language used, the object to be accomplished by the provisions and the surrounding circumstances. In the case State ex rel. v. Triplett, 134 Ohio St., 480, at page 484, the court stated in part as follows:

"\* \* \*the spirit or the intention of  
the law must prevail over the letter\* \* \*"

It is stated in 50 Ohio Jur. 2d 161, Section 184, in part as follows:

"It is a commonly accepted canon of construction that the intent, not the letter, of the statute constitutes the law and that a thing may be within the letter of a statute but not within its meaning. It often happens that the true intention of the lawmaking body, though obvious, is not expressed by the language employed in a statute when that language is given its literal meaning. In such cases, the carrying out of the legislative intention, which, as we have seen, is the prime and sole object of all rules of construction, can only be accomplished by departure from the literal interpretation of the language employed.  
\* \* \*"

The language of Section 4507.40, supra, denotes legislative concern for the matter of the source of payment of court costs incurred in actions under this section. The use of the language "if the Court finds that such person has shown cause why his driving privilege should not be suspended" certainly includes such situations wherein such person appears and demonstrates to the Court that the Court lacks jurisdiction. The only discernable difference from such a situation and the instant problem is that the lack of jurisdiction is found to be apparent without the appearance of the person against whom the Registrar is acting.

I cannot conclude that the legislature intended such a void or vacuum in this area. Upon examination of the nature of the proceeding, I am unable to discover any reasonable or significant difference in a failure of the Registrar's action for want of jurisdiction in the instance when the person against whom the action appears and when he does not appear.

In providing that the costs of the proceeding should be paid out of the county treasury if the court finds that a person has shown cause why his driving privilege should not be suspended, I conclude that the legislature also intended that when the action fails because the person against whom it was brought resides in another county and this fact is discovered without this fact being shown by such person, the costs shall be paid out of the county treasury of the county in which the proceeding was held.

Accordingly, it is my opinion that under Section 4507.40, Revised Code, when the Registrar of Motor Vehicles applies to a Municipal Court or a County Court for an order requiring a person to appear and show cause why his driving privileges should not be suspended, and the action fails for want of jurisdiction, the costs incurred shall be paid out of the county treasury of the county in which the proceedings were held.