

**Note from the Attorney General's Office:**

1972 Op. Att'y Gen. No. 72-063 was modified  
by 1974 Op. Att'y Gen. No. 74-077.

1972 Op. Att'y Gen. No. 72-063 was modified  
by 1977 Op. Att'y Gen. No. 77-088.

## OPINION NO. 72-063

## Syllabus:

1. The court costs in a municipal court, in a criminal action, are properly payable from the municipal treasury and not from the county treasury.

2. Taxable costs in a municipal court are limited to those amounts authorized by statute in a common pleas court by virtue of Section 1901.26 (A), Revised Code.

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To: Stephan M. Gabalac, Pros. Atty., Summit County, Akron, Ohio  
By: William J. Brown, Attorney General, August 7, 1972

Your predecessor's request for my opinion sets forth the following facts:

"The Municipal Court of Cuyahoga Falls here in Summit County recently had a case \* \* \* initiated by the State of Ohio, Highway Patrol \* \* \*.

"As we understand the situation, the City of Cuyahoga Falls believes that any court costs involved including depositions and shorthand reporters are a proper charge to the State of Ohio through the general fund of Summit County. Our position is that the Municipal Court may establish a schedule of fees and costs, that the Municipal Court may appoint one or more court reporters, but that the schedule of fees and costs, which would include the court reporters costs may not exceed the \$8.00 per day under Section 2301.20 for Common Pleas Courts.

"We further call your attention to Section 1901.33 which seems to say that these costs should be paid from the city treasury rather than from the county."

Your predecessor then asks:

"1. Are court costs in a municipal court, in a criminal action, originating through the State Highway Patrol Department to be paid by the municipality or are they to be charged and paid from the county general fund?

"2. If the county is to pay these fees and costs, are they limited to similar fees and costs as would be applied in a common pleas court case or may they be for any amount that the municipal court may consider proper?

"3. Is the answer the same if the criminal charges were based upon a municipal policeman's

affidavit under Section 2901.252 rather than under affidavit from the State Highway Patrol?"

By way of introduction, the Municipal Court Act creating Ohio Municipal Courts was enacted in 1951 (124 Ohio Laws 589). See Wills, "The New Ohio Municipal Court Act", 12 Ohio St. L.J. 314 (1951). A rather substantial evaluation of the Act was published by my predecessor concerning the distribution of funds held by the clerk of the municipal court. Opinion No. 1132, Opinions of the Attorney General for 1952. He explained, at some length, the relationship of a municipal court to the municipal corporation in which it is established, and its relationship with the State. He concluded that municipal courts are, in a substantial sense, agencies of the State; and that they are, in a limited sense, agencies of the municipality whose ordinances they are enforcing; but, more particularly, and in a primary sense, an agency of the municipality which creates them. Relevant to our present problem, the municipality which creates one "is required to provide suitable accommodations for such court and to bear the burden of certain very substantial items of expense incident to the operation of the court." He concluded this line of thinking with this sentence: "\* \* \* where a considerable burden of expense has been imposed on such city it can fairly be inferred that the General Assembly would intend to provide a partial alleviation of that burden in the manner which I have indicated." The manner he indicated was basically the same then as it is now. Now, Chapter 1901, Revised Code, provides that fines received for violation of municipal ordinances shall be paid, to the extent that statutory provision is not otherwise made for their disposition into the municipal treasury. It provides, as to fines collected for the violation of State law, that they be paid into the county treasury, Section 1901.31 (F), Revised Code. Fines collected from persons arrested by State Highway Patrolmen shall be paid 45 per cent into the state treasury, 45 per cent into the municipal treasury, and 10 per cent into the county treasury. Section 5503.04, Revised Code. Section 1901.31 (G), Revised Code, provides that any monies held by the clerk for more than one year, unclaimed or not consumed by the costs in the case, shall be paid into the city treasury. These are the provisions of our present Code, which are intended to provide a partial alleviation of the burden of the municipality in which a municipal court is created.

Your first two questions require that we define taxable costs, and ask whether there are provisions in our present law which will allow certain items of taxable costs to be collected from the State through the county treasury. The Supreme Court of Ohio, in Benda v. Fana, 10 Ohio St. 2d 259 (1967), said that costs are not synonymous with expenses, that they were unknown at common law, and that they may be defined as "\* \* \* the statutory fees to which officers, witnesses, jurors and others are entitled for their services \* \* \* which the statutes authorize to be taxed and included in the judgment or sentence." The Court continued, "They are allowed only by authority of statute", citing State, ex rel. v. Guilbert, 77 Ohio St. 333, 338 (1907).

Justice Matthias, in Benda, cited Judge Corrigan's dissenting Opinion in Terry V. Burger, 6 Ohio App. 2d 53 (1966), as being a correct assessment of how costs should be taxed in a civil action in a municipal court. In Terry, the question was whether the \$150.00 expense of an expert witness and the \$50.00 expense of a court reporter could be charged as costs against the losing party. While the majority in Terry allowed the taxing of the whole \$200.00

as costs, Judge Corrigan, in dissent, pointed out that Section 2335.06, Revised Code, allows only three dollars (\$3.00) per day to be taxed as a witness fee, whether the witness testifies " \* \* \* before a judge \* \* \* or person authorized to take depositions." He pointed out, also, that the above Revised Code Section is applicable to the municipal court by virtue of Section 1901.26, Revised Code, which provides in part as follows:

"Costs in a municipal court shall be fixed and taxed as follows:

"(A) The municipal court, by rule, may establish a schedule of fees and costs to be taxed in any action or proceeding, either civil or criminal, which shall not exceed the fees and costs provided by law for a similar action or proceeding in the court of common pleas.

\* \* \* \* \*

"(D) In any civil or criminal action or proceeding, witnesses' fees shall be fixed in accordance with sections 2335.06 and 2335.08 of the Revised Code."

It is clear that Judge Corrigan's opinion in Terry v. Burger, supra, that much of the expense of litigation may not be properly taxed as costs, was accepted by The Supreme Court of Ohio. Benda v. Pana, supra. Since Benda, his rationale has been explicitly followed as to the cost of depositions. In Hamman v. Witherstine, 20 Ohio Misc. 77 (1969), the Mahoning County Common Pleas Court admitted that there had been confusion in the courts of appeals as to whether the expense of depositions might be included in costs, but stated that this confusion had been fully and finally settled in Benda. The Court noted that Section 2319.27, Revised Code, provides for payment of the expenses involved in taking depositions, but that it contains no authority to collect such expenses as costs, nor does any other Section so provide. See Section 2303.20, Revised Code.

The Supreme Court decision in Benda is clearly the controlling decision here, as is Judge Corrigan's dissent, which was approved in Benda. Judge Corrigan denied that the expenses involved in taking depositions could be properly taxed as costs; and he also denied that the expense of hiring a court reporter could be properly taxed as costs. As he pointed out, Section 2335.06, supra, limits the taxable costs to three dollars (\$3.00) per day in the case of witnesses. In similar fashion, Section 2301.21, Revised Code, limits the taxable costs to eight dollars (\$8.00) per day in the case of shorthand reporters.

A careful reading of Lakewood v. Stump, 26 Ohio App. 2d 119 (1971), suggests that it was more concerned with a right to transcript issue than an issue of taxable costs. The Court found that due process under the Fourteenth Amendment of the United States Constitution requires that a municipal court order and pay for a court reporter where properly requested by the defendant, Section 2301.20, Revised Code; and held that the reporter's attendance fees should be taxed as costs. I can agree that Section 2301.22, Revised Code, provides that the county shall pay the reporter. When it comes to taxing costs, however, Section 2301.21, supra, limits the amount taxed for a reporter to eight dollars

(\$8.00) per day, and Section 1901.26 (A), supra, provides that the costs taxed in a municipal court, in either civil or criminal proceedings, shall not exceed those allowable in the court of common pleas. Here, as with witness fees and depositions, the expense of providing a reporter greatly exceeds the amount the Court can tax to the loser as costs.

The remaining part of this question is whether items which are properly a part of taxable costs can be collected from the county treasury. It would seem that this question has been answered in the Opinion of my predecessor, which was cited in the opening paragraphs of this Opinion, Opinion No. 1132, supra. The municipality which creates a municipal court "is required to provide suitable accommodations for such court and to bear the burden of certain very substantial items of expense incident to the operation of the court." There is no statutory authority allowing a municipal court to bill the county treasury for these cost items. In fact, Section 1901.33, Revised Code, specifically provides that they shall be paid out of the city treasury. As aforementioned, there is other provision in State law for "alleviation" of the municipality's fiscal burden.

To analogize to the relationship between the common pleas court and the county and state treasuries might be helpful. There is no statute authorizing the taxing of costs directly against the State in criminal cases. 14 O. Jur. 2d Section 89. Payment for all these expenses, of course, comes from the county treasury; just as in municipal courts, payment comes from the city treasury. Statutes provide few exceptions to the above general plan. In certain felony cases, certain items of expense can be billed to the State Treasurer so that he can reimburse the county. See State, ex rel. v. Cloud, 7 Ohio St. 2d 55 (1966), Witherspoon v. Belt, 177 Ohio St. 1 (1964); see, also, Opinion No. 820, Opinions of the Attorney General for 1959, and Opinion No. 68-098, Opinions of the Attorney General for 1968. There is no similar statutory provisions that would allow the municipal court to bill the county treasury. It would seem then, that these cost items would be the responsibility of the city treasury, and the county would have no duty or authority to reimburse the city treasury.

In view of the above answer to your first two questions, there is no need to answer your third one.

In specific answer to your questions it is my opinion, and you are so advised, that:

1. Court costs in a municipal court, in a criminal action, are properly payable from the municipal treasury and not from the county treasury.
2. Taxable costs in a municipal court are limited to those amounts as authorized by statute in a common pleas court by virtue of Section 1901.26 (A), Revised Code.