

6592

1. "COURT COSTS"—TERM REFERS TO CHARGES OR FEES —STATUTORY—SERVICES PERFORMED BY OFFICERS OF COURT—FEES OF SHERIFF— APPOINTMENT OF GUARDIAN — SUBSEQUENT PROCEEDINGS — CHARGES OR PUBLICATION COSTS MADE BY NEWSPAPER NOT INCLUDED—PUBLICATION OF NOTICE—APPOINTMENT OF GUARDIAN—SECTION 2111.02 RC.
2. MISTAKE—COURT COSTS PAID IN GUARDIANSHIP— NOT REFUNDABLE BY PROBATE COURT WHERE COSTS HAVE BECOME PART OF GENERAL FUND OF COUNTY— SECTION 325.57 RC.

## SYLLABUS:

1. The term "court costs" as used in Section 2111.02, Revised Code, refers to those charges or fees, fixed by statute, for services rendered by officers of the court in the progress of the cause or judicial proceeding and, specifically, includes fees of a sheriff for service on the necessary parties in a proceeding for the appointment of a guardian and any subsequent proceedings, but does not include charges or publication costs made by a newspaper incident to the publication of notice of the appointment of a guardian.

2. Court costs paid by mistake in a guardianship proceeding, by reason of Section 2111.02, Revised Code, are not refundable by the probate court where such costs have become a part of the general fund of the county as provided in Section 325.27, Revised Code.

Columbus, Ohio, May 12, 1956

Hon. Frank T. Cullitan, Prosecuting Attorney  
Cuyahoga County, Cleveland, Ohio

Dear Sir:

I am in receipt of your letter requesting my opinion as follows:

"The Cleveland Regional Office of the Veterans Administration has raised questions pertaining to the refunding of costs paid in guardianship proceedings in Probate Court by reason of the provisions of R. C. 2111.02, which reads in part:

"When the primary purpose of the appointment is, or was, the collection, disbursement, or administering of moneys awarded by the Veterans Administration to the

ward, of the assets derived therefrom, no court costs shall be charged in the proceeding for the appointment or in any subsequent proceedings made in pursuance of the appointment, unless the value of the estate, including the moneys then due under the Veterans Administration award, exceeds \$1,500.'

"In the particular cases in which a minor of an incompetent veteran receives benefits under this statute and a guardian is necessary, the question raised is 'what costs are refundable, if paid?' Does the term 'court costs' as used in the statute include sheriff's fees, publication costs, and all other normal charges incident to the appointment of a guardian?"

"In any case after the appointment of a guardian for a veteran, the guardian pays to the Probate Court the fees of the sheriff for service on the necessary parties and the publication costs to the Daily Legal News incident to the publication of notice of appointment of the guardian. Having been paid and now in the reach of this court, are these moneys now refundable by Probate Court under the statute?"

"It seems that the Probate Courts have not heretofore expressed any view on this matter and inasmuch as these problems are statewide, I am requesting your opinion on the questions raised."

As I understand your letter, you are presenting for my consideration two distinct questions: First, you ask the nature or type of costs which are embraced within the term "court costs" as used in Section 2111.02, Revised Code, and, secondly, you ask whether such costs, if erroneously paid, are properly refunded by the probate court.

Section 2111.02, Revised Code, provides in its entirety that:

"When found necessary, the probate court on its own motion or an application by any interested party shall appoint a guardian of the person, the estate, or both, of a minor, incompetent, habitual drunkard, idiot, imbecile, or lunatic or a guardian of the estate of a confined person; provided the person for whom the guardian is to be appointed is a resident of the county or has a legal settlement therein.

"If a person is incompetent due to physical disability, the consent of the incompetent must first be obtained before the appointment of a guardian for him.

"The guardian of an incompetent, habitual drunkard, idiot, imbecile, lunatic, or confined person, by virtue of such appointment shall be the guardian of the minor children of his ward, unless the court appoints some other person as their guardian.

“When the primary purpose of the appointment of a guardian is, or was, the collection, disbursement, or administering of moneys awarded by the veterans administration to the ward, or assets derived therefrom, no court costs shall be charged in the proceeding for the appointment or in any subsequent proceedings made in pursuance of the appointment, unless the value of the estate, including the moneys then due under the veterans administration award, exceeds one thousand five hundred dollars.”

An examination of the above provisions and the provisions of related sections of the Revised Code, or former General Code, fails to disclose a statutory definition for the term “court costs” as used in this section. Necessarily, then, reference must be had to judicial or lexicographical expression or both.

The term “costs” is defined in Black’s Law Dictionary, Fourth Edition, as:

“Fees and charges required by law to be paid to the courts or some of their officers, the amount of which is fixed by law.”

Citing *Blair v. Brownstone Oil & Refining Company*, 20 Cal, App., 316, 128 P., 1022.

Of like effect: *Markam v. Ross*, 73 Ga., 105; *Pezel v. Yerex*, 56 Cal. App., 304, 205 P., 475.

In Ohio the Supreme Court of Ohio has defined “costs” in the case of *State, ex rel. Commissioners of Franklin County v. Guilbert, Auditor*, 77 Ohio St., 333, at page 338, in the following language:

“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 any action or prosecution and which the statutes authorize to be taxed and included in the judgment or sentence. \* \* \*”

The fact that the above quoted definitions are of the word “costs” alone does not in my opinion destroy their applicability to the instant situation. For, upon examination, it will be seen that these definitions obviously had reference to costs in the limited and specific sense of judicial or court costs.

In answer to your first question, therefore, I am of the opinion that the term “court costs” as used in Section 2111.02, Revised Code,

alludes to those charges or fees, fixed by statute, for services rendered by officers of the court in the progress of the cause or judicial proceeding, and, specifically, includes fees of a sheriff for services on the necessary parties in a proceeding for the appointment of a guardian and any subsequent proceedings. I am of the further opinion, however, that charges or publication costs, made by a newspaper, incident to the publication of notice of the appointment of a guardian are not court costs within the meaning of Section 2111.02, and are unaffected thereby. My conclusion in this latter regard is impelled by what I consider to be the constitutional inability of the legislature to abolish charges for publication made by a private person, firm or corporation.

You next inquire whether such costs, if paid, are refundable by the probate court. I assume you have reference to a case, or those cases, in which the court costs are paid through a mistake, either of law or fact.

The answer to this second question would appear to me to depend upon the disposition or administration of court costs.

In this regard, Section 325.27, Revised Code, provides:

“All the fees, costs, percentages, penalties, allowances, and other perquisites collected or received by law as compensation for services by a county auditor, county treasurer, probate judge, sheriff, clerk of the court of common pleas, county engineer, or county recorder, shall be received and collected for the sole use of the treasury of the county in which such officers are elected, and shall be held, accounted for, and paid over as public moneys belonging to such county in the manner provided by sections 325.30 and 325.31 of the Revised Code.”

It will be seen from a reading of this section that all fees and costs, which would include court costs, payable to officers of the county are collected for the sole use of the county treasury. Sections 325.30 and 325.31, Revised Code, provide further, and respectively, that each officer named in Section 325.27 keep an account of all fees and costs received by him and that he pay, on the first business day of each month, such fees and costs into the county treasury to the credit of the general county fund.

Becoming in this manner a part of the general fund such moneys are expendable only as authorized by statute.

Section 307.55, Revised Code, provides in material part:

“No claims against the county shall be paid otherwise than upon the allowance of the board of county commissioners, upon the warrant of the county auditor, except in those cases in which the amount due is fixed by law or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the auditor upon the proper certificate of the person or tribunal allowing the claim.”

There being no provision in law for a refund of court costs paid by mistake, in a proceeding such as you have outlined, these costs could only be recovered, if at all, through the allowance of a claim by the county commissioners as provided in the above quoted section.

In specific answer to your second question, then, it is my opinion that “court costs” paid by mistake in a guardianship proceeding, by reason of Section 2111.02, Revised Code, are not refundable by the probate court where such costs have become a part of the general fund of the county.

Respectfully,

C. WILLIAM O'NEILL

Attorney General