

5348

1. UNPAID TRANSPORTATION AND CRIMINAL COSTS — DUE COUNTY FROM STATE—SHALL BE ALLOWED AS A CREDIT AGAINST ANY INDEBTEDNESS DUE OR BECOMING DUE FROM SAID COUNTY TO STATE — SECTIONS 5546-20a, 13455-6, 13455-7, 13455-8 G.C.
2. FEES, MAGISTRATES AND THEIR OFFICERS, GROWING OUT OF FELONY CASES, WITHIN SUCH COUNTIES, WHERE DEFENDANT CONVICTED, SHALL BE INCLUDED WITHIN SUCH CREDIT.
3. WHERE SUCH CREDIT ALLOWED TO COUNTY, A WARRANT IN AMOUNT OF FEES IN FAVOR OF CLERK OF COURTS, SHALL BE DRAWN ON COUNTY GENERAL FUND BY AUDITOR — AUDITOR SHALL PAY SUCH MONEYS TO PERSONS ENTITLED THERETO — SECTION 3016 G.C.
4. CRIMINAL COSTS AND TRANSPORTATION FEES, CHARGEABLE TO STATE, CREDITED TO COUNTY, SHALL BE CREDITED TO ACCOUNT OF CLERK OF COURTS — SECTION 2982 G.C.

## SYLLABUS:

1. Under the provisions of section 5546-20a, General Code, all unpaid transportation and criminal costs due a county from the state pursuant to sections 13455-6, 13455-7 and 13455-8 of the General Code, shall be allowed as a credit against any indebtedness due or becoming due from said county to the state.

2. The fees of the various magistrates and their officers within such counties growing out of felony cases where the defendant was convicted, shall be included within such credit so allowed.

3. Upon the allowance of such credit to a county, a warrant in the amount of such fees shall be drawn on the general fund of the county by the auditor thereof in favor of the clerk of courts, who upon receipt of such warrant shall then, pursuant to the provisions of section 3016, General Code, pay the moneys received by him to the persons entitled thereto.

4. The amount credited to a county for criminal costs and transportation fees chargeable to the state under the provisions of sections 13455-6, 13455-7 and 13455-8, General Code, shall be credited to the account kept by the clerk of courts of such county, in accordance with the provisions of section 2982, General Code.

Columbus, Ohio, July 25, 1942.

Bureau of Inspection and Supervision of Public Offices,  
Columbus, Ohio.

Gentlemen:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“Sections 13455-6, 13455-7 and 13455-8, General Code, make provision for the payment by the state to the Clerks of Courts of the various counties of the costs of convicting persons accused of felonies, when such persons are convicted and sentenced to the penitentiary or a reformatory.

Due to the failure of the Legislature to make appropriations for this purpose, no payments of the cost bills filed by the Clerks of Courts with the State Auditor have been made for a number of years.

Section 5546-20a, General Code, was originally enacted by the Ninety-Second General Assembly, became effective June 24, 1937, and provided that the State Auditor shall not make distribution of the local government fund as provided in Sections 5546-1 to 5546-22 of the General Code, to any county which is indebted or otherwise obligated to the state, until such indebtedness or obligation has been duly paid or satisfied. However, provision is made in such sections that if the board of county commissioners of any county so indebted to the state would enter into an agreement with the Director of Finance for the discharge of said indebtedness or other obligation over a period of time not to exceed ten years, such county would be entitled to receive distribution of the local government fund to which it is entitled, provided its current indebtedness or obligation to the state is kept fully paid and any agreement entered into relative to past indebtedness or obligation is fully performed.

The Ninety-Fourth General Assembly passed Amended Substitute Senate Bill No. 176, which amended Section 5546-20a, General Code, by the insertion of the following words:

‘In the accounting between the state and county under any such contract, whether heretofore or hereafter entered into, there shall be allowed to the county as a credit against the indebtedness set forth therein such amount as equals the accrued transportation and criminal costs of such county for the years 1935 to 1940, both inclusive, chargeable against the state in pursuance of the provisions of General Code sections 13455-6, 13455-7 and 13455-8, as certified by the Auditor of State. With respect to any county not having entered into a contract for the liquidation of indebtedness to the state as hereinbefore provided, any such costs accrued to it as hereinbefore set forth shall be applied as a credit against any indebtedness due or becoming

due from such county to the state. Provided, that there may be deducted from each county's share, such amount as shall be repaid to courts of lower jurisdiction by the Clerk of Courts. All balances shall be credited to the county fee fund.'

Under the provisions of Section 3016, General Code, in felonies, when the defendant is convicted, the fees of the various magistrates and their officers shall be inserted in the judgment of conviction, and when collected, the same shall be disbursed by the Clerk of Courts to the persons entitled thereto. Therefore, if the case in which the cost bill has been filed with the Auditor of State for payment originated in a minor court, the fees of the officers of such court are included in the bill as presented.

Referring to the above quoted amendment to Section 5546-20a, General Code, and to that portion which reads, 'Provided that there may be deducted from each county's share such amount as shall be repaid to courts of lower jurisdiction by the clerk of courts.'

Does this mean that the amount of fees represented in such cost bills as being due to minor court officials is to be deducted from the county's share of the allocations of sales tax; or are such fees to be deducted from the total amount of the credit the county is to receive, which would be represented by the charges on such cost bills and transportation expense to be certified by the Auditor of State as being due such county?

What method is to be pursued in order to place money in the hands of the clerk of courts so that said official may pay to the minor court officials the fees due them?

What is meant by 'All balances shall be credited to the county fee fund?'

Section 5546-20a, General Code, which was amended by the 94th General Assembly by the insertion of the language contained in your letter, reads as follows:

"The auditor of state shall not make distribution of the local government fund as provided in sections 5546-1 to 5546-22 of the General Code, both inclusive, to any county which is indebted or otherwise obligated to the state until such indebtedness or other obligation has been duly paid and satisfied. Provided, however, that no distribution of the local government fund as set out herein shall be withheld unless and until an itemized statement of such indebtedness is furnished the county auditor of the county from which said indebtedness is due at least thirty days prior to the withholding of said distribution. Provided, however, that any county which through its board of county commissioners shall enter into an agreement, which agreement shall be uniform for all counties as to time and percentage of

payment of such indebtedness or other obligation, with the director of finance for the discharge of said indebtedness or other obligation over a period not to exceed ten years in duration commencing January 1, 1938, shall be entitled to receive distribution of the local government fund to which it is entitled provided its current indebtedness or obligation to the state is kept fully paid and any agreement entered into relative to past indebtedness or obligation is fully performed.

In the accounting between the state and county under any such contract, whether heretofore or hereafter entered into, there shall be allowed to the county as a credit against the indebtedness set forth therein such amount as equals the accrued transportation and criminal costs of such county for the years 1935 to 1940, both inclusive, chargeable against the state in pursuance of the provisions of General Code sections 13455-6, 13455-7 and 13455-8, as certified by the Auditor of State. With respect to any county not having entered into a contract for the liquidation of indebtedness to the state as hereinbefore provided, any such costs accrued to it as hereinbefore set forth shall be applied as a credit against any indebtedness due or becoming due from such county to the state. Provided, that there may be deducted from each county's share, such amount as shall be repaid to courts of lower jurisdiction by the Clerk of Courts. All balances shall be credited to the county fee fund.

The failure of a county to maintain payments under an agreement for installment payments as herein provided shall immediately make all remaining unpaid installments due and thereupon the auditor of state shall withhold all sums distributable to said county until the agreement is discharged in full. Any indebtedness or obligation of the state to a county shall be deducted from the amount owing to the state by such county in determining the indebtedness or obligation with respect to which distribution is withheld as herein provided. Nothing herein contained shall prevent any county from discharging all or any part of the said indebtedness or other obligations prior to the time or times designated in the said agreement."

It will be noted that said language provides:

"In the accounting \* \* \* there shall be allowed to the county as a credit against the indebtedness \* \* \* such amount as equals the accrued transportation and criminal costs of such county \* \* \* chargeable against the state in pursuance of the provisions of General Code sections 13455-6, 13455-7 and 13455-8 \* \* \*."

The above language is mandatory. It provides that there *shall* be allowed as a credit, etc. It is fundamental that the use of the word "shall" by the Legislature is to be interpreted so as to make the pro-

visions of law in which it is contained mandatory. In the case of *State, ex rel. Smith, v. Barnell*, 109 O. S., page 246, it is stated (page 255):

“Whether a statute is mandatory or directory is to be ascertained from a consideration of the entire act, its nature, its object, and the consequences which would result from construing it one way or the other.”

In the instant case, if the language in question were construed as permissive, rather than mandatory, a most unreasonable and absurd result would follow. Whether or not a credit would be allowed to a particular county would rest entirely in the discretion of the Director of Finance, and if allowed, the amount thereof would be subject to the whim and caprice of such officer. Certainly it cannot be presumed that the General Assembly intended to enact a law producing such absurd consequences.

Section 3016, General Code, which provides the method for the payment of fees of magistrates and their officers, reads in part as follows:

“In felonies, when the defendant is convicted, the fees of the various magistrates and their officers, the witness fees and interpreter’s fees shall be inserted in the judgment of conviction and when collected the same shall be disbursed by the clerk of courts to the persons entitled thereto.”

Sections 13455-7 and 13455-8, General Code, referred to in section 5546-20a, *supra*, read:

Section 13455-7.

“When the clerk of courts certifies on the cost bill that execution was issued according to the provisions of this chapter, and returned by the sheriff ‘no goods, chattels, lands or tenements found whereon to levy,’ the warden of the penitentiary or superintendent of such reformatory shall certify thereon, the date on which said prisoner was received at the institution and the fees for transportation, whereupon the auditor of the state shall audit such cost bill and the fees for transportation, and issue his warrant on the treasurer of the state for such amount as he finds to be correct.”

Section 13455-8.

“Upon the return of the writ against the convict, if an amount of money has not been made sufficient for the payment

of costs of conviction and no additional property is found whereon to levy, the clerk shall so certify to the auditor of state, under his seal, with a statement of the total amount of costs, the amount paid and the amount remaining unpaid. Such amount so unpaid as the auditor finds to be correct, shall be paid by the state to the order of such clerk."

From the above, it is at once apparent that the fees of magistrates and their officers are included in the costs of felony cases and are therefore within the credit which must be allowed under section 5546-20a, General Code.

It is also noteworthy that similar mandatory provisions are contained in the latter section with respect to the credit to be given these counties which did not enter into the agreement prescribed in said section. The provisions relative thereto, read:

"With respect to any county not having entered into a contract for the liquidation of indebtedness to the state as hereinbefore provided, any such costs accrued to it as hereinbefore set forth shall be applied as a credit against any indebtedness due or becoming due from such county to the state."

Having pointed out that the fees due magistrates and their officers must be included in the credit allowed, I come now to a consideration of the proviso and its relation to the remainder of the statute. It reads as follows:

"Provided, that there may be deducted from each county's share, such amount as shall be repaid to courts of lower jurisdiction by the Clerk of Courts."

With respect to the interpretation of a proviso, it is stated in 37 O. Jur., pages 786 and 787:

"A proviso in an act may properly be considered in giving construction to other portions of the same act, since the intention of the legislature is to be ascertained not only from the body of the statute, but from the provisos as well. Similarly, in order to arrive at the correct interpretation of a proviso, it is necessary to consider its connection with all those provisions with which it has a direct and immediate relation. As a general rule, unless the contrary intention clearly appears, a proviso is to be construed with reference to the paragraph immediately preceding that to which it is appended."

It will be observed that the words "each county's share" which ap-

pear in the proviso, appear nowhere else in the same paragraph. In fact a reading of the entire statute discloses that said phrase appears no other place therein. What, then, is meant by "each county's share"?

The subject matter of the paragraph is the credit to be allowed each county against its indebtedness to the state. In view of this, it must certainly follow that the General Assembly, when it used the term "each county's share," intended such language to mean the share of credit each county is entitled to. While it may appear that more appropriate language might have been chosen to express such intent, yet this fact does not authorize a distortion of the meaning of the statute, which it seems to me, while expressed in terms which are somewhat ambiguous, is nevertheless quite evident.

It next becomes necessary to determine by whom the deductions from each county's share of credit may be made. In this connection, it should be borne in mind that a proviso is generally used in a statute to qualify, limit or restrain the operation of general terms contained in a previous part of such statute. In such case, it might appear that the General Assembly, after providing in general terms that the credit to be allowed a county should include all costs in felony cases, intended to qualify such provision by excluding from the term "criminal costs," as used in the statute, the fees due courts of lower jurisdiction.

To me, however, this position seems untenable. It is significant to note that the contentious language reads:

"Provided, that there *may* be deducted, \* \* \*."

Had the General Assembly stated "there *shall* be deducted, etc." some support might be found for the argument that the proviso qualifies and limits the general language preceding it. The use of the word "may," however, indicates to me that it was intended thereby to grant authority to pay to magistrates and their officers the fees due them which under the general terms of the statute are clearly included in the credit to be allowed.

The use of the word "may" is generally construed to make the provisions in which it is contained permissive or directory. In this respect, I am not unmindful of the fact that the literal meaning of such word is not always conclusive in the construction of a statute in which it is em-

ployed. However, it should always be presumed that the Legislature intended to use words in their usual and natural meaning. Indulging this presumption it would be absurd to say that the proviso qualifies the general provisions of the statute. If the provisions of the statute which prescribe that the credit allowed shall equal the accrued transportation and criminal costs chargeable against the state are to be qualified by language which reads "that there *may* be deducted, etc.", the Director of Finance could as he saw fit make such deduction in the case of one county and fail or refuse to make it in the case of another. This of course is ridiculous. The language of the statute must at all times be given a rational and sensible construction.

It therefore appears to me that the provision in question should be construed as authority to the auditor of each county receiving the credit prescribed in the statute to draw his warrant on the general fund for the amount due courts of lower jurisdiction within the county, in favor of the clerk of courts and by him then paid to such courts of lower jurisdiction under the terms of section 3016, *supra*. To hold otherwise would in my opinion defeat the manifest purpose of the amendment to section 5546-20a, General Code.

As you point out, the only change made in said section by the 94th General Assembly was the addition of the language set out in your letter. An amendment to a statute is obviously made to effect some purpose. The purpose in the present instance was to allow to each county as a credit against its indebtedness an amount equal to accrued transportation and criminal costs chargeable against the state.

The construction to be afforded a statute should at all times be in conformity to its general purpose. The general purpose of the amendment is clearly expressed by the General Assembly. It therefore seems to me that such purpose should not be thwarted by a strained construction of the proviso but should, on the other hand, be effectuated by placing a fair and reasonable interpretation upon the entire language of the amendment.

You also ask what is meant by "All balances shall be credited to the county fee fund." Section 5625-9, General Code, which prescribes the funds to be established in each subdivision, contains no provision with respect to a "county fee fund." Section 2982, General Code, which pre-



scribes that accounts be kept by certain county officers including the clerks of courts, reads as follows:

“Each of such officers shall keep full and regular accounts of all official fees, costs, percentages, penalties, allowances or other perquisites charged or collected by him, and such accounts shall be records of the offices, shall belong to the county, and shall be transmitted by such officer to his successor in office. At all times such accounts shall be subject to the examination of the county commissioners, the judge or judges of the court of common pleas, or any person appointed for that purpose by the judge or judges, or of any person authorized by law to make such examination, or of any other person.”

From the above it will be noted that a full and regular account shall be kept by the clerk of courts of all costs collected by him. Therefore, if the costs in favor of a county which are chargeable against the state under sections 13455-6, 13455-7 and 13455-8, are paid by the state to the clerk of courts of such county, when the same become due, the clerk's account, in conformity with the requirements of section 2982, supra, would show the receipt thereof by him. The fact that the payment of such costs was not made by the state when the same became due, in the manner prescribed by sections 13455-7 and 13455-8, and is now credited to a county against its indebtedness to the state under the authority of section 5546-20a, does not relieve the clerk of courts of the duty of keeping an account thereof. Obviously, therefore, his account should be credited with the amount allowed as a credit to the county on its indebtedness.

It would therefore appear, and it is consequently my opinion, that the words “All balances shall be credited to the county fee fund” should be construed to mean that the amount of credit allowed a county for transportation and criminal costs chargeable to the state should be credited to the account of the clerk of courts of such county in the same manner as if such costs had been paid when due.

Summarizing, it is therefore my opinion that:

1. Under the provisions of section 5546-20a, General Code, all unpaid transportation and criminal costs due a county from the state pursuant to sections 13455-6, 13455-7 and 13455-8 of the General Code, shall be allowed as a credit against any indebtedness due or becoming due from said county to the state.

2. The fees of the various magistrates and their officers within such counties growing out of felony cases where the defendant was convicted, shall be included within such credit so allowed.

3. Upon the allowance of such credit to a county, a warrant in the amount of such fees shall be drawn on the general fund of the county by the auditor thereof in favor of the clerk of courts, who upon receipt of such warrant shall then, pursuant to the provisions of section 3016, General Code, pay the moneys received by him to the persons entitled thereto.

4. The amount credited to a county for criminal costs and transportation fees chargeable to the state under the provisions of sections 13455-6, 13455-7 and 13455-8, General Code, shall be credited to the account kept by the clerk of courts of such county, in accordance with the provisions of section 2982, General Code.

Respectfully,

THOMAS J. HERBERT  
Attorney General.