

Note from the Attorney General's Office:

1959 Op. Att'y Gen. No. 59-820 was overruled in part by 1987 Op. Att'y Gen. No. 87-062.

820

1—SHERIFF MAY CHARGE JAIL FEES FOR RECEIVING PRISONER. 2—LIABILITY OF STATE—NOT ALTERED BY FACT THAT COURT TERMINATES PROBATION OF PERSON BEFORE EXPIRATION THEREOF. §§ 311.17 (B) (3) (a), 2949.18, R. C. OAG 4702, 1942.

SYLLABUS:

1. Under the provisions of Division (B)(3)(a) of Section 311.17, Revised Code, a sheriff may charge jail fees for receiving a prisoner, and also for discharging or surrendering a prisoner, once in each case against the prisoner.

2. The liability of the state for criminal costs under the provisions of Section 2949.18, Revised Code, is not altered by the fact that a court, after having placed a person on probation, terminates such probation before the expiration thereof, and sentences such person to imprisonment. (Opinion No. 4702, Opinions of the Attorney General for 1942, approved and followed.)

Columbus, Ohio, September 15, 1959

Hon. James A. Rhodes, Auditor
State of Ohio, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“The 103rd General Assembly enacted Amended House Bill No. 1051 which appropriates money to pay criminal court costs which have occurred in prior years.

“In checking over the cost bills which have been submitted to the State Auditor by the various counties for payments, we find that costs have been set forth in the cost bill wherein the same defendant has been charged and convicted of more than one offense in the same trial in the same term of court. One instance has been submitted where the defendant was found guilty of seven indictments for breaking and entering and these indictments were covered by separate cases.

“In rendering cost bills the sheriff of the county, presumably acting under the authority found in Section 311.17 of the Revised Code, Sub-section B, Item 3, under said Sub-section, ‘Jail Fees’ and sub-section (a) of this sub-section B has charged 50¢ for receiving the prisoner and 50¢ for surrendering the prisoner in each of the cases.

“An opinion is respectfully requested as to whether or not such fees, namely for receiving the prisoner and 50¢ for surrendering the prisoner, shall be allowed in each case or whether only one allowance for jail fees shall be made.

“In connection with a person who is charged with a crime, convicted thereof and by the court placed on probation and is thereafter again brought into court for violating the terms of probation, which order of probation is revoked and sentence imposed, an opinion is respectfully requested, as to whether the costs incurred by both the sheriff’s office and the clerk of courts office in connection with the revocation of the order of probation are proper items of expense for which the county may be reimbursed as criminal costs by the State of Ohio.

“In your Opinion No. 1477 rendered December 27, 1959, part 5 of the syllabus, you hold that the cost of returning a fugitive to Ohio and the expense incident to the apprehension and return may not be included in the criminal cost bill nor may the county be reimbursed for the cost by the State. However, in the matter referred to herein, we are concerned mainly with such

costs which relate to the clerk of courts office in connection with the revocation of probation and those costs of the sheriff to present the defendant before the court for sentencing.”

In the last paragraph of your letter you refer to Opinion No. 1477 rendered December 27, 1959; it should be Opinion No. 1477 dated December 27, 1957.

Your first request asks whether a sheriff can charge a jail fee for each case where a prisoner has more than one case against him, or should only one allowance for jail fee for all cases be made.

Section 311.17, Sub-section B, Item 3 (a), Revised Code, provides that a sheriff may charge jail fees as follows:

“(a) For receiving a prisoner, one dollar, and for discharging or surrendering a prisoner, one dollar to be charged but once in each case;”

It is my opinion that the words “each case” are controlling and supply an answer to this question, and that the sheriff can make the charge for jail fee once in each of the cases against the prisoner.

Your second question is in connection with a person charged with crime, placed on probation and thereafter apprehended, probation revoked and execution of sentence imposed, and whether the costs incurred by the sheriff and clerk in connection with the revocation of probation are proper items of expense for which the county may be reimbursed as criminal costs by the state.

In Opinion No. 4702, Opinions of the Attorney General for 1942, the syllabus reads as follows:

“The liability of the state for criminal costs under the provisions of Section 13455-5, and cognate sections of the General Code, is not altered by the fact that a court, after having placed a person convicted of a felony on probation, terminates such probation before the expiration thereof and sentences such person to the penitentiary or reformatory.”

In that opinion a predecessor of mine in discussing your identical question stated as follows:

“By force of this section, the court may terminate the probation and at that time impose any sentence which might originally have been imposed. From the foregoing, it appears that during the period of probation the court does not relinquish jurisdiction

to impose sentence. The effect of probation is to hold in abeyance the imposition of sentence of a defendant until such time as the court is satisfied such person is no longer worthy of probation. Having come to such conclusion, the court may then impose any sentence which might have been imposed at the time probation was ordered.

“Such being the case, I fail to see how the time of imposition of sentence affects the liability of the state for criminal costs. In your case it must be conceded that had the court sentenced the defendant to imprisonment at the time a plea of guilty was entered or upon conviction the state would be liable for costs. In my opinion the fact that imposition of sentence was suspended until after termination for cause of a probationary period does not relieve the liability of the state for costs.”

This opinion was concurred in, referred to, and affirmed by my predecessor in his opinion to you, being numbered 1477, for the year 1957, referred to in the last paragraph of your request.

Section 2949.18, Revised Code, reads as follows:

“When the clerk of the court of common pleas certifies on a cost bill that execution was issued under section 2949.15 of the Revised Code, and returned by the sheriff ‘no goods’ chattels, land, or tenements found whereon to levy,’ the person in charge of the penal institution to which the convicted felon was sentenced shall certify thereon the date on which the prisoner was received at the institution and the fees for transportation, whereupon the auditor of state shall audit such cost bill and the fees for transportation, and issue his warrant on the treasurer of state for such amount as he finds to be correct.”

This section of the Revised Code is a reenactment of Section 13455-7, General Code, considered in Opinion No. 4702, *supra*, in practically the identical language, and I concur in the reasoning and conclusion of my predecessor in this regard.

Accordingly, it is my opinion and you are advised:

1. Under the provisions of Division (B)(3)(a) of Section 311.17, Revised Code, a sheriff may charge jail fees for receiving a prisoner, and also for discharging or surrendering a prisoner, once in each case against the prisoner.

2. The liability of the state for criminal costs under the provisions of Section 2949.18, Revised Code, is not altered by the fact that a court, after

having placed a person on probation, terminates such probation before the expiration thereof, and sentences such person to imprisonment. (Opinion No. 4702, Opinions of the Attorney General for 1952, approved and followed.)

Respectfully,

MARK McELROY

Attorney General