

OPINION NO. 2005-014

Syllabus:

1. Pursuant to R.C. 2937.40(B), the clerk of the court of common pleas may not apply money deposited as bail by a person other than the defendant toward the payment of court costs, unless the person who deposited the money expressly approves the money being applied toward the payment of court costs.
2. Pursuant to R.C. 2937.40-.41, the clerk of the court of common pleas may not apply money deposited as bail toward the payment of court costs when the defendant is acquitted of all criminal charges in the case.
3. Pursuant to R.C. 2937.40, the clerk of the court of common pleas may not apply money deposited as bail toward the payment of court costs before the entry of a judgment by the court or magistrate.
4. A local rule of court requiring the clerk of the court of common pleas to apply money deposited as bail toward the payment of court costs does not control when it conflicts with R.C. 2937.40 or R.C. 2937.41.
5. A county prosecuting attorney is not required to pay court costs when a crim-

inal prosecution brought in the court of common pleas does not result in a defendant being convicted of, or pleading guilty to, an offense.

To: David W. Phillips, Union County Prosecuting Attorney, Marysville, Ohio
By: Jim Petro, Attorney General, March 31, 2005

Your predecessor requested an opinion concerning the payment of court costs in criminal cases. Specifically, we were asked to address the following questions:

1. May the clerk of the court of common pleas apply money deposited as bail by a person other than the defendant toward the payment of court costs?
2. May the clerk of the court of common pleas apply money deposited as bail toward the payment of court costs when the defendant is acquitted of all criminal charges in the case?
3. May the clerk of the court of common pleas apply money deposited as bail toward the payment of court costs before the entry of a judgment by the court or magistrate?
4. Does a local rule of court requiring the clerk of the court of common pleas to apply money deposited as bail toward the payment of court costs control when it conflicts with a statute?
5. Is the county prosecuting attorney responsible for paying court costs when a criminal prosecution brought in the court of common pleas does not result in a defendant being convicted of, or pleading guilty to, an offense?

For the reasons that follow, pursuant to R.C. 2937.40-.41, the clerk of the court of common pleas may not apply money deposited as bail in a criminal case toward the payment of court costs when (1) the money was deposited by a person other than the defendant, unless the person who deposited the money expressly approves the money being applied toward the payment of court costs, (2) the defendant is acquitted of all criminal charges in the case, or (3) the court or magistrate has not entered a judgment in the case. In addition, a local rule of court that requires the clerk of the court of common pleas to apply money deposited as bail toward the payment of court costs does not control when it conflicts with R.C. 2937.40 or R.C. 2937.41. A county prosecuting attorney is not required to pay court costs when a criminal prosecution brought in the court of common pleas does not result in a defendant being convicted of, or pleading guilty to, an offense.

Bail in Criminal Cases

In order to address the specific questions presented in this matter, we must briefly review the statutes and criminal rules governing bail in criminal cases. R.C. 2937.22 states that “[b]ail is security for the appearance of an accused to appear and answer to a specific criminal or quasi-criminal charge in any court or before any magistrate at a specific time or at any time to which a case may be continued, and not depart without leave.” *See* R.C. 2937.31; Ohio R. Crim. P. 46; Ohio Traf. R. 4(A); *see also* R.C. 2935.27; R.C. 2937.221; R.C. 2937.23(A)(3); R.C. 2937.35. An accused may post the following types of bail in the amount set by the court:

- (1) The personal recognizance of the accused or an unsecured bail bond;
- (2) A bail bond secured by the deposit of ten percent of the amount of the bond in cash. Ninety percent of the deposit shall be returned upon compliance with all conditions of the bond;
- (3) A surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the defendant.

Ohio R. Crim. P. 46(A); *see* R.C. 2937.22; *see also* R.C. 2935.27; R.C. 2937.221(A).

Money deposited as bail in a criminal case is “held by or subject to the order of the court or magistrate before whom the accused is to appear initially, and upon the transfer of the case to any other court or magistrate shall be returnable to and transmitted to the transferee court or magistrate.” R.C. 2937.28; *see* R.C. 2931.30; R.C. 2937.22; Ohio R. Crim. P. 21(B); *see also* R.C. 2935.15; R.C. 2935.27; Ohio R. Crim. P. 18(B). R.C. 2937.28 further provides that it is unnecessary for a defendant to give new recognizance for appearance in the court of common pleas “for arraignment upon indictment or pending appeal after judgment and sentence, unless the magistrate or judge of the trial court or the court to which appeal is taken, shall, for good cause shown, increase or decrease the amount of the recognizance, but such recognizance shall continue and be in full force until trial and appeal therefrom is finally determined.” *See also* Ohio R. Crim. P. 46(H) (“[u]nless otherwise ordered by the court pursuant to [Ohio R. Crim. P. 46(E)]¹, or if application is made by the surety for discharge, the same bond shall continue until the return of a verdict or the acceptance of a guilty plea. In the discretion of the court, the same bond may also continue pending sentence or disposition of the case on review. Any provision of a bond or similar instrument that is contrary to this rule is void”).

The court receiving money as bail gives a receipt or other evidence of the deposit of the money to the person depositing the money. R.C. 2937.22; *see also* R.C. 2935.27(B); R.C. 2937.33. If an accused fails to appear before the court or magistrate when required in a criminal case, money that is deposited as bail may be forfeited to the court. R.C. 2937.35; Ohio R. Crim. P. 46(I); *see also* R.C. 2935.27(D); Ohio Traf. R. 7(C). *See generally* R.C. 2937.36 (setting forth provisions governing bail forfeiture proceedings). In addition, money deposited as bail may be discharged and released as provided in R.C. 2937.40 to the person depositing the money.² *See* R.C. 2937.41.

Except as Provided in R.C. 2937.40(B), Money Deposited as Bail by a Person Other than the Defendant May Not Be Used to Pay Court Costs

Let us now turn to the first question, which asks whether the clerk of the court of common pleas may apply money deposited as bail by a person other than the defendant toward the payment of court costs. Pursuant to R.C. 2937.40(B), the clerk of the court of common pleas may not apply money deposited as bail by a person other than the defendant to

¹ Ohio R. Crim. P. 46(E) states that “[a] court, at any time, may order additional or different types, amounts, or conditions of bail.”

² A magistrate or clerk of court “may require presentation of an issued original receipt as a condition to the return” of discharged and released bail. R.C. 2937.41.

ward the payment of court costs, unless the person who deposited the money expressly approves the money being applied toward the payment of court costs.

R.C. 2937.40(A), which authorizes a court to discharge and release money deposited as bail by a person other than the defendant, provides as follows:

Bail of any type that is deposited under [R.C. 2937.22-.45] or [Ohio R. Crim. P. 46] *by a person other than the accused shall be discharged and released, and sureties on recognizances shall be released, in any of the following ways:*

(1) When a surety on a recognizance or the depositor of cash or securities as bail for an accused desires to surrender the accused before the appearance date, the surety is discharged from further responsibility or the deposit is redeemed in either of the following ways:

(a) By delivery of the accused into open court;

(b) When, on the written request of the surety or depositor, the clerk of the court to which recognizance is returnable or in which deposit is made issues to the sheriff a warrant for the arrest of the accused and the sheriff indicates on the return that he holds the accused in his jail.

(2) By appearance of the accused in accordance with the terms of the recognizance or deposit and the entry of judgment by the court or magistrate;

(3) By payment into court, after default, of the sum fixed in the recognizance or the sum fixed in the order of forfeiture, if it is less. (Emphasis added.)

When money that is deposited as bail is discharged and released, “the magistrate or clerk of the court shall return, subject to division (B) or (C) of [R.C. 2937.40], deposited cash or securities to the depositor.” R.C. 2937.41; *see* R.C. 2935.27(C). Pursuant to R.C. 2937.40(B), money that is deposited as bail by a person other than the defendant³ is returned to the person as follows:

When cash or securities have been deposited as bail by a person other than the accused and the bail is discharged and released pursuant to [R.C. 2937.40(A)],

³ Money that is deposited as bail by a defendant is returned to the defendant as follows:

Bail of any type that is deposited under [R.C. 2937.22-.45] or [Ohio R. Crim. P. 46] by an accused shall be discharged and released to the accused, and property pledged by an accused for a recognizance shall be discharged, upon the appearance of the accused in accordance with the terms of the recognizance or deposit and the entry of judgment by the court or magistrate, except that, if the defendant is not indigent, the court may apply deposited bail toward the satisfaction of a penalty or fine, and court costs, assessed against the accused upon his conviction or guilty plea, and may declare forfeited and levy or execute against pledged property for the satisfaction of a penalty or fine, and court costs, assessed against the accused upon his conviction or guilty plea.

or when property has been pledged by a surety on recognizance and the surety on recognizance has been released pursuant to [R.C. 2937.40(A)], the court shall not deduct any amount from the cash or securities or declare forfeited and levy or execute against pledged property. *The court shall not apply any of the deposited cash or securities toward, or declare forfeited and levy or execute against property pledged for a recognizance for, the satisfaction of any penalty or fine, and court costs, assessed against the accused upon his conviction or guilty plea, except upon express approval of the person who deposited the cash or securities or the surety.* (Emphasis added.)

The plain language of R.C. 2937.40(B) thus clearly precludes applying any money deposited as bail by a person other than the defendant toward the satisfaction of court costs assessed against the defendant. *See State ex rel. Denton v. Bedinghaus*, 98 Ohio St. 3d 298, 2003-Ohio-861, 784 N.E.2d 99, at ¶20 (2003) (“R.C. 2937.40(B) forbids cash or securities deposited as bail by a person other than the accused to be used to satisfy any legal obligation of the accused upon discharge and release of bail except upon the express approval of the person who deposited the cash or securities”); *cf. State v. Lefever*, 91 Ohio App. 3d 301, 309, 632 N.E.2d 589 (Champaign County 1993) (“R.C. 2937.40 specifically states that when cash has been deposited as bail by a person other than the accused, the court shall not apply any of the cash toward the satisfaction of a penalty or fine[.]” and, as such, money deposited as bail by a defendant’s father may not be applied toward the payment of mandatory fines imposed against the defendant). The only exception to R.C. 2937.40(B)’s stricture is when the person who deposited the money expressly approves the money being applied toward the payment of court costs. *See State ex rel. Denton v. Bedinghaus*, 98 Ohio St. 3d 298, 2003-Ohio-861, 784 N.E.2d 99, at ¶20; *see also State v. Harshman*, 156 Ohio App. 3d 452, 2004-Ohio-1202, 806 N.E.2d 598 (Seneca County 2004) (because the defendant’s mother did not voluntarily consent to applying money deposited as bail toward the payment of defendant’s court costs, the money could not be applied toward the payment of the defendant’s court costs). *See generally State ex rel. Baker v. Troutman*, 50 Ohio St. 3d 270, 273, 553 N.E.2d 1053 (1990) (“[i]t does not follow that because [R.C. 2937.40(B)] prohibits use of cash or security deposits to pay fines and costs except with consent, a court may then *require* ‘consent’ before permitting such deposits”). Therefore, pursuant to R.C. 2937.40(B), the clerk of the court of common pleas may not apply money deposited as bail by a person other than the defendant toward the payment of court costs, unless the person who deposited the money expressly approves the money being applied toward the payment of court costs.

Money Deposited as Bail May Not Be Used to Pay Court Costs When the Defendant is Acquitted

The second question for our consideration is whether the clerk of the court of common pleas may apply money deposited as bail toward the payment of court costs when the defendant is acquitted of all criminal charges in the case. Pursuant to R.C. 2937.40-41, the clerk of the court of common pleas may not apply money deposited as bail toward the payment of court costs when the defendant is acquitted of all criminal charges in the case.

In Ohio, if a defendant is convicted of, or pleads guilty to, a criminal offense in the court of common pleas, court costs are included in the sentence and a judgment for such costs is rendered against the defendant. *See* R.C. 309.08(A); R.C. 2301.25; R.C. 2335.11;

R.C. 2743.70; R.C. 2947.23(A); R.C. 2949.09-.092; R.C. 2949.111; R.C. 2949.14; R.C. 2949.15; *State v. Powers*, 117 Ohio App. 3d 124, 128, 690 N.E.2d 32 (Fulton County 1996). See generally 2003 Op. Att’y Gen. No. 2003-016 at 2-117 n.2 (“[i]f a person accused of violating a state law is convicted in a municipal court, the court costs are included in the sentence and a judgment for such costs is rendered against the defendant”). Conversely, if the defendant is acquitted of all criminal charges in the case, the defendant is not required to pay court costs. See R.C. 2301.25 (“[i]f, upon final judgment, the costs or any part thereof shall be adjudged against a defendant in a criminal case, he shall be allowed credit on the cost bill of the amount paid by him for the transcript he ordered and if the costs are finally adjudged against the state, the defendant shall have his deposit refunded”); *City of Cuyahoga Falls v. Coup-Peterson*, 124 Ohio App. 3d 716, 717, 707 N.E.2d 545 (Summit County 1997) (“there is no authority for a court to assess costs against a defendant who has not been sentenced, absent an agreement otherwise between the parties”); *State v. Powers*, 117 Ohio App. 3d at 128, 690 N.E.2d 32 (“the legislature intended that costs of prosecution, including jury fees, can be assessed against a defendant only if the state is successful”); 1969 Op. Att’y Gen. No. 69-081 at 2-175 (“in order for the defendant to be responsible for the cost of the jury, he must be found guilty. The converse of this is that if he is innocent or acquitted, then he is not to be charged for the cost”); see also R.C. 2335.11 (“if no conviction is had, such costs⁴ shall be paid by the county upon the allowance of the county auditor” (footnote added)); cf. 2003 Op. Att’y Gen. No. 2003-016 (syllabus, paragraph one) (“[w]hen a criminal prosecution brought in a municipal court for an alleged violation of state law results in the dismissal or acquittal of the defendant, the county pays the court costs”); 1977 Op. Att’y Gen. No. 77-088 (syllabus) (“[i]n an unsuccessful criminal prosecution, brought in a municipal court for an alleged violation of state law, fees for witnesses and jurors, and other court costs, are to be paid by the county”). A defendant who is acquitted of all criminal charges in a case thus is not liable for the payment of court costs.

Moreover, R.C. 2937.41 provides that, when money deposited as bail in a criminal case is discharged and released, “the clerk of the court shall return, subject to [R.C. 2937.40], deposited cash ... to the depositor.” R.C. 2937.40, in turn, does not authorize the clerk of the court of common pleas to apply money deposited as bail toward the payment of court costs when the defendant is acquitted of all criminal charges in the case. Instead, R.C. 2937.40(C) requires money deposited as bail by a defendant “to be discharged and released” to the defendant upon the appearance of the defendant “in accordance with the terms of the recognizance or deposit and the entry of judgment by the court or magistrate, *except that*, if the defendant is not indigent, the court may apply deposited bail toward the satisfaction of ... court costs, assessed against the accused *upon his conviction or guilty plea*[.]” (Emphasis added.) R.C. 2937.40(B) also provides that money deposited as bail by a person other than the defendant that is discharged and released to the depositor pursuant to R.C. 2937.40(A) may not be applied toward the satisfaction of court costs assessed against the defendant. As explained previously, the only exception to R.C. 2937.40(B)’s prohibition is when the person who deposited the money expressly approves the money being applied toward the payment of court costs “assessed against the accused *upon his conviction or guilty plea*[.]” (Emphasis added.) Accordingly, R.C. 2937.40-.41 require money deposited as bail to be returned to the depositor unless the defendant has been convicted of, or pleaded guilty to, a criminal offense.

⁴ R.C. 2335.11 provides for the payment of “the fees of the various magistrates and their officers, ... witness fees, and interpreter’s fees.”

Because a defendant is not liable for the payment of court costs unless he has been convicted of, or pleaded guilty to, a criminal offense and R.C. 2937.40-.41 require money deposited as bail to be returned to the depositor unless the defendant has been convicted of, or pleaded guilty to, a criminal offense, money deposited as bail may not be applied toward the payment of court costs when the defendant is acquitted of all criminal charges in the case. Therefore, pursuant to R.C. 2937.40-.41, the clerk of the court of common pleas may not apply money deposited as bail toward the payment of court costs when the defendant is acquitted of all criminal charges in the case.

Money Deposited as Bail May Not Be Used to Pay Court Costs Before the Entry of a Judgment by the Court

Your predecessor's third question asks whether the clerk of the court of common pleas may apply money deposited as bail toward the payment of court costs before the entry of a judgment by the court or magistrate. Pursuant to R.C. 2937.40, the clerk of the court of common pleas may not apply money deposited as bail toward the payment of court costs before the entry of a judgment by the court or magistrate.

Under R.C. 2937.40(C), money that is deposited as bail by a defendant is discharged and released by the court to the defendant or toward the payment of court costs "upon the appearance of the accused in accordance with the terms of the recognizance or deposit and the *entry of judgment by the court or magistrate*["]." (Emphasis added.) In addition, money that is deposited as bail by a person other than the defendant may be discharged and released by the court to the depositor prior to the entry of a judgment by the court, *see* R.C. 2937.40(A), (B), or the money may be discharged and released by the court to the depositor or toward the payment of court costs (with the depositor's consent) upon the "appearance of the accused in accordance with the terms of the recognizance or deposit and the *entry of judgment by the court or magistrate*["]" R.C. 2937.40(A)(2) (emphasis added); *see* R.C. 2937.40(B).

R.C. 2937.40 thus unequivocally states that money deposited as bail may not be applied toward the payment of court costs until the appearance of the defendant in accordance with the terms of the recognizance or deposit and the entry of judgment by the court or magistrate. Accordingly, pursuant to R.C. 2937.40, the clerk of the court of common pleas may not apply money deposited as bail toward the payment of court costs before the entry of a judgment by the court or magistrate. *See generally* 1965 Op. Att'y Gen. No. 65-48 (syllabus) ("[a] county court has no authority to provide, by rule of court, that a defendant in a misdemeanor case who requests a jury trial, must first deposit or secure the costs for subpoena and empanelling a jury").

A Local Rule of Court Does Not Control When it Conflicts with R.C. 2937.40 or R.C. 2937.41

The fourth question is whether a local rule of court requiring the clerk of the court of common pleas to apply money deposited as bail in a criminal case toward the payment of court costs controls when it conflicts with a statute. A local rule of court requiring the clerk of the court of common pleas to apply money deposited as bail toward the payment of court costs does not control when it conflicts with R.C. 2937.40 or R.C. 2937.41.

A court of common pleas is vested with the power to establish local rules of

procedure. Ohio Const. art. IV, § 5(B); Ohio Sup. R. 5(A); see *Cassidy v. Glossip*, 12 Ohio St. 2d 17, 21, 231 N.E.2d 64 (1967). It is firmly established, however, that a local rule of a court of common pleas may not conflict with a statute, and that, when a conflict does exist between a statute and rule, the statute prevails over the rule. *State ex rel. M.A.D.D. v. Gosser*, 20 Ohio St. 3d 30, 33, 485 N.E.2d 706 (1985); *Cassidy v. Glossip*, 12 Ohio St. 2d at 21, 231 N.E.2d 64; *Cleveland Ry. Co. v. Halliday*, 127 Ohio St. 278, 188 N.E. 1 (1933); *In re Estate of Duffy*, 148 Ohio App. 3d 574, 2002-Ohio-3844, 774 N.E.2d 344, at ¶20 (Geauga County 2002); *Lager v. Pittman*, 140 Ohio App. 3d 227, 233, 746 N.E.2d 1199 (Portage County 2000); *Kimble v. Troyan*, 124 Ohio App. 3d 599, 602-03, 707 N.E.2d 1 (Harrison County 1997), *appeal not allowed*, 81 Ohio St. 3d 1497, 691 N.E.2d 1058 (1998); *Fogg v. Friesner*, 55 Ohio App. 3d 139, 140, 562 N.E.2d 937 (Wood County 1988); *State ex rel. Gudzinis v. Constantino*, 43 Ohio App. 3d 52, 53, 539 N.E.2d 173 (Trumbull County 1988); *Krupansky v. Pascual*, 27 Ohio App. 3d 90, 92, 499 N.E.2d 899 (Lorain County 1985); *Grecian Gardens, Inc. v. Bd. of Liquor Control*, 2 Ohio App. 2d 112, 113, 206 N.E.2d 587 (Franklin County 1964); 1965 Op. Att’y Gen. No. 65-48 at 2-92.

As stated above, R.C. 2937.40 and R.C. 2937.41 require money deposited as bail to be returned to the depositor unless the defendant has been convicted of, or pleaded guilty to, a criminal offense. In addition, R.C. 2937.40 provides that money deposited as bail may not be applied toward the payment of court costs until the appearance of the defendant in accordance with the terms of the recognizance or deposit and the entry of judgment by the court or magistrate. Also, R.C. 2937.40(B) further provides that money deposited as bail by a person other than the defendant may not be applied toward the payment of court costs, unless the person who deposited the money expressly approves the money being applied toward the payment of court costs. R.C. 2937.40 and R.C. 2937.41 thus set forth explicit provisions governing the disposition of money deposited as bail in a criminal case and the application of such money to the payment of court costs.

Because a local rule of a court of common pleas does not prevail over a statute when the two are in conflict, a local rule of court that conflicts with R.C. 2937.40 or R.C. 2937.41 as to the disposition of money deposited as bail in a criminal case or the application of such money to the payment of court costs does not control. Hence, a local rule of court requiring the clerk of the court of common pleas to apply money deposited as bail toward the payment of court costs does not control when it conflicts with R.C. 2937.40 or R.C. 2937.41.

A County Prosecuting Attorney Is Not Required to Pay Court Costs That Are Assessed Against the State in a Criminal Case

Your predecessor’s final question asks whether a county prosecuting attorney is responsible for paying court costs in a criminal case when the court costs are assessed against the state. A county prosecuting attorney is not required to pay court costs that are assessed against the state in a criminal case.

As stated above, when a criminal prosecution brought in the court of common pleas does not result in a defendant being convicted of, or pleading guilty to, an offense, the defendant is not responsible for paying court costs. See R.C. 2301.25; *City of Cuyahoga Falls v. Coup-Peterson*, 124 Ohio App. 3d at 717, 707 N.E.2d 545; *State v. Powers*, 117 Ohio App. 3d at 128, 690 N.E.2d 32; 1969 Op. Att’y Gen. No. 69-081 at 2-175. In such a situation, the

county pays the court costs.⁵ See R.C. 2301.24; R.C. 2301.25; R.C. 2335.08; R.C. 2335.09; R.C. 2335.11; R.C. 2947.23(A)(2); 2003 Op. Att’y Gen. No. 2003-016; 1977 Op. Att’y Gen. No. 77-088.

No statute, however, states or implies that a county prosecuting attorney is required to pay court costs when a criminal prosecution brought in the court of common pleas does not result in a defendant being convicted of, or pleading guilty to, an offense. To the contrary, the statutes governing the disbursement of moneys from the county treasury in criminal cases indicate that court costs are paid from the county treasury upon presentation to the county auditor of the proper order or voucher and evidentiary matter from the court.

By way of example,⁶ R.C. 2301.24 states that “[t]he compensation for transcripts of testimony requested by the prosecuting attorney during trial in criminal cases or by the trial judge, in either civil or criminal cases, and copies of decisions and charges furnished by direction of the court *shall be paid from the county treasury*, and taxed and collected as costs.” (Emphasis added.) See also R.C. 2301.25 (“[w]hen more than one transcript of the same testimony or proceedings is ordered at the same time by the same party, or by the court, the compensation for making such additional transcript *shall be one-half the compensation allowed for the first copy, and shall be paid for in the same manner* except that where ordered by the same party only the cost of the original shall be taxed as costs” (emphasis added)). Similarly, R.C. 2335.08 provides:

Each witness attending, under recognizance or subpoena issued by order of the prosecuting attorney or defendant, before the grand jury or any court of rec-

⁵ If a magistrate or court requires a complaining witness or other person to be liable for the “costs if the complaint is dismissed,” R.C. 2935.21, the complaining witness or other person, rather than the county, is liable for court costs if the complaint is dismissed. See generally 1932 Op. Att’y Gen. No. 4861, vol. III, p. 1460, at 1462 (“[t]he legislature in [G.C. 13432-20 (now R.C. 2935.21)] has provided that a justice of the peace may require a complainant in a misdemeanor case to be liable for the costs of prosecution in the event the complaint is dismissed”). “[A]n officer authorized to make arrests when in the discharge of his official duty, or other person or officer authorized to assist the prosecuting attorney in the prosecution of offenders” may not be required to furnish security for costs under R.C. 2935.21. R.C. 2935.21.

⁶ There are many different types of criminal prosecutions that may be undertaken on behalf of the state in courts of common pleas. See generally R.C. Title 29 (setting forth the criminal offenses against the state). In addition, the costs of prosecution vary from case to case. See generally *State ex rel. Comm’rs of Franklin County v. Guilbert*, 77 Ohio St. 333, 338, 83 N.E. 80 (1907) (“[c]osts, 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 an action or prosecution and which the statutes authorize to be taxed and included in the judgment or sentence”); *Centennial Ins. Co. v. Liberty Mut. Ins. Co.*, 69 Ohio St. 2d 50, 50-51, 430 N.E.2d 925 (1982) (same). It is, therefore, not possible, by means of a formal opinion, to list all of the statutes authorizing the disbursement of moneys from the county treasury in criminal cases.

ord, in criminal causes, shall be allowed the same fees as provided by [R.C. 2335.06] in civil causes, to be taxed in only one cause when such witness is attending in more causes than one on the same days, unless otherwise directed by special order of the court. When certified to the county auditor by the clerk of the court, *such fees shall be paid from the county treasury*, and except as to the grand jury, taxed in the bill of costs. (Emphasis added.)

In addition, R.C. 2335.09 states that, “in any criminal proceeding[,]” the judge or magistrate “may appoint interpreters, who shall receive fees as witnesses in the case or proceeding.” The fees paid to interpreters are to be taxed and paid as provided in R.C. 2335.05-.08 for other witness fees. R.C. 2335.09. Thus, pursuant to R.C. 2335.08, when these fees are certified to the county auditor by the clerk of the court, the fees are paid from the county treasury and taxed in the bill of costs.

R.C. 2335.11 also provides that, if no conviction is had in a criminal case, the fees of the magistrate and his officers, witness fees, and interpreter’s fees “shall be paid by the county upon the allowance of the county auditor” from the county treasury. *See* R.C. 2335.08; R.C. 2335.09. Finally, R.C. 2947.23(A)(2) prescribes that “[i]f a jury has been sworn at the trial of a case, the fees of the jurors shall be included in the costs, which shall be paid to *the public treasury from which the jurors were paid.*” (Emphasis added.) In light of the foregoing statutes, it is thus readily apparent that court costs in criminal cases are paid from the county treasury. *See generally* R.C. 2335.37 (“[a]ll costs certified from the county treasury in criminal cases, and afterwards collected and paid to the clerk of the court of common pleas, probate judge, or sheriff, and all fines paid to them, shall be paid by such officer into the county treasury, on or before the Saturday next preceding the beginning of each term of the court of common pleas”).

Pursuant to R.C. 319.16, moneys in the county treasury may not be disbursed unless the county auditor has issued a warrant authorizing the disbursement:

The county auditor shall issue warrants ... on the county treasurer for all moneys payable from the county treasury, upon presentation of the proper order or voucher and evidentiary matter for the moneys, and keep a record of all such warrants showing the number, date of issue, amount for which drawn, in whose favor, for what purpose, and on what fund. The auditor shall not issue a warrant for the payment of any claim against the county, unless it is allowed by the board of county commissioners, except where the amount due is fixed by law or is allowed by an officer or tribunal, including a county board of mental health or county board of mental retardation and developmental disabilities, so authorized by law.

See 2002 Op. Att’y Gen. No. 2002-005 at 2-24.

Moreover, R.C. 307.55(A), which sets forth when a claim against the county may be paid by the county auditor, provides, in 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.

Accordingly, under R.C. 319.16 and R.C. 307.55, a claim against the county is paid from the county treasury upon warrant of the county auditor when the amount due is fixed by law or allowed by the board of county commissioners or some other person or tribunal authorized by law to allow the payment of the claim.

No statute authorizes a county prosecuting attorney to allow a claim against the county for court costs in a criminal case. Instead, court costs in criminal cases are imposed by courts. *See* R.C. 2301.24; 2301.25; 2335.08; 2335.09; R.C. 2335.11; R.C. 2947.23(A)(2); *see also* R.C. 2947.23(A)(1) (“[i]n all criminal cases, including violations of ordinances, the judge or magistrate shall include in the sentence the costs of prosecution and render a judgment against the defendant for such costs”); R.C. 2949.14 (“[u]pon conviction of a nonindigent person for a felony, the clerk of the court of common pleas shall make and certify under his hand and seal of the court, a complete itemized bill of the costs made in such prosecution”); Ohio R. Crim. P. 32(C) (“[a] judgment of conviction shall set forth the plea, the verdict or findings, and the sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly”). *See generally Hollon v. Hollon*, 117 Ohio App. 3d 344, 351, 690 N.E.2d 893 (Athens County 1996) (court costs are imposed by a trial court). This means that a court, rather than the county prosecuting attorney, allows claims against the county for court costs in criminal cases.

The statutes governing the disbursement of moneys from the county treasury in criminal cases thus indicate that court costs in criminal cases are paid from the county treasury upon presentation to the county auditor of the proper order or voucher and evidentiary matter from the court.⁷ Therefore, a county prosecuting attorney is not required to pay court costs when a criminal prosecution brought in the court of common pleas does not result in a defen-

⁷ The power of a court of common pleas to assess a cost or fee against the county in a criminal case must be expressly granted by statute. 2003 Op. Att’y Gen. No. 2003-016 (syllabus, paragraph two); 1997 Op. Att’y Gen. No. 97-058 at 2-350; 1984 Op. Att’y Gen. No. 84-088 at 2-303; *see Centennial Ins. Co. v. Liberty Mut. Ins. Co.*, 69 Ohio St. 2d at 51, 430 N.E.2d 925; *State ex rel. Comm’rs of Franklin County v. Guilbert*, 77 Ohio St. at 339, 83 N.E. 80. Various statutes authorize a court of common pleas to assess certain costs and fees against the county when a criminal prosecution does not result in a defendant being convicted of, or pleading guilty to, an offense. *See, e.g.*, R.C. 2301.24; 2301.25; R.C. 2303.20; 2335.08; 2335.09; R.C. 2947.23(A)(2). When a court of common pleas assesses a statutorily authorized cost or fee against the county in a criminal case, the county is required to pay that cost or fee unless R.C. 325.31(C) applies. *See* 2003 Op. Att’y Gen. No. 2003-016 at 2-123; 1977 Op. Att’y Gen. No. 77-088.

R.C. 325.31(C), which concerns the county’s payment of fees due certain officeholders for their services, provides as follows:

None of the officers named in [R.C. 325.27] shall collect any fees from the county. Each of such officers shall, at the end of each calendar year, make and file a sworn statement with the board of county commissioners of all such fees, costs,

dant being convicted of, or pleading guilty to, an offense. *See generally Akron Transp. Co. v. Glander*, 155 Ohio St. 471, 480, 99 N.E.2d 493 (1951) (“when a statute directs a thing may be done by a specified means or in a particular manner it may not be done by other means or in a different manner”).

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. Pursuant to R.C. 2937.40(B), the clerk of the court of common pleas may not apply money deposited as bail by a person other than the defendant toward the payment of court costs, unless the person who deposited the money expressly approves the money being applied toward the payment of court costs.
2. Pursuant to R.C. 2937.40-41, the clerk of the court of common pleas may not apply money deposited as bail toward the payment of court costs when the defendant is acquitted of all criminal charges in the case.
3. Pursuant to R.C. 2937.40, the clerk of the court of common pleas may not apply money deposited as bail toward the payment of court costs before the entry of a judgment by the court or magistrate.
4. A local rule of court requiring the clerk of the court of common pleas to apply money deposited as bail toward the payment of court costs does not control when it conflicts with R.C. 2937.40 or R.C. 2937.41.
5. A county prosecuting attorney is not required to pay court costs when a criminal prosecution brought in the court of common pleas does not result in a defendant being convicted of, or pleading guilty to, an offense.

penalties, percentages, allowances, and perquisites which have been due in the officer's office and unpaid for more than one year prior to the date such statement is required to be made. (Emphasis added.)

R.C. 325.27, in turn, names the county auditor, county treasurer, probate judge, county sheriff, clerk of the court of common pleas, county engineer and county recorder as officeholders who are required to pay into the county treasury all fees, costs, percentages, penalties, allowances, and other perquisites collected or received by them as compensation for their services. R.C. 325.31(C) thus prohibits the clerk of the court of common pleas and the other officeholders enumerated in R.C. 325.27 from collecting from the county any fees for their services.