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COURTS; COMMON PLEAS—ADDITIONAL COMPENSATION AND EXPENSE MONEY PAID TO JUDGE SITTING AS MEMBER OF A THREE-JUDGE COURT—SUCH PAYMENTS MAY NOT BE TAXED AS COSTS OF PROSECUTION—§§141.07, 2945.06, 2847.23 R.C.

**SYLLABUS:**

The additional compensation and expense money paid to a judge of a court of common pleas under the terms of Section 141.07, Revised Code, when such judge is sitting as a member of the three-judge court provided by Section 2945.06, Revised Code, may not be taxed as costs of prosecution under the provisions of Section 2947.23, Revised Code.

Columbus, Ohio, January 29, 1958

Hon. Forrest H. Bacon, Prosecuting Attorney  
Wyandot County, Upper Sandusky, Ohio

Dear Sir:

Your request for my opinion raises the following question:

"May the compensation paid to a common pleas judge under Section 141.07 R.C. of Ohio when presiding as a three-judge court in a criminal case when the jury is waived by defendant as provided in Section 2945.06 R.C. of Ohio, be taxed against the defendant as part of the costs; the same as provided in Section 2947.23 R.C. of Ohio, in the event of the conviction of the defendant?"

Section 2947.23, Revised Code, to which you refer, reads as follows:

"In 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. If 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."

Taxation of costs is not a matter of common law but of statute. Costs may be taxed only as specifically provided by statute. *Farrier v. Cairns*, 5 Ohio 45; *State ex rel. Commissioners v. Guilbert*, 77 Ohio St., 333.

I find no provision of statute authorizing the taxation as costs in a criminal case of the compensation and expenses paid, as provided by Section 141.07, Revised Code, to judges assigned to a three-judge court. There is no specific statute providing therefor. Section 2947.23, Revised Code, has only the effect of requiring the taxation in criminal cases of costs as prescribed in detail by other statutes.

Further, you will note that Section 2947.23, Revised Code, requires taxation of *costs*. The term "costs" was defined as follows in the *Guilbert* case, *supra*, as follows:

"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 an action or prosecution and which the statutes authorize to be taxed and included in the judgment or sentence."

The definition does not include an apportioned part of the compensation of judges and other officers. Section 141.07, Revised Code, provides for additional compensation and expense money, not for fees.

For these reasons it is my opinion, and you are accordingly advised, that the additional compensation and expense money paid to a judge of a court of common pleas under the terms of Section 141.07, Revised Code, when such judge is sitting as a member of the three-judge court provided by Section 2945.06, Revised Code, may not be taxed as costs of prosecution under the provisions of Section 2947.23, Revised Code.

Respectfully,  
WILLIAM SAXBE  
Attorney General