

OPINION NO. 82-050**Syllabus:**

1. A violation of a statute or ordinance which governs, directs, limits or prohibits the operation of a motor vehicle is a moving violation within the meaning of Section 169 (uncodified) of Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981).
2. The costs imposed by Section 169 (uncodified) of Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981) and Section 167 (uncodified) of Am. Sub. H.B. 694 as amended by Section 60 (uncodified) of Am. Sub. H.B. 552, 114th Gen. A. (1981) (eff. Nov. 24, 1981) are to be charged on a per case basis.
3. There is no limitation on when or how often a court may waive court costs, but a court may not waive the costs mandated by Section 169 (uncodified) of Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981) and Section 167 (uncodified) of Am. Sub. H.B. 694 as amended by Section 60 (uncodified) of Am. Sub. H.B. 552, 114th Gen. A. (1981) (eff. Nov. 24, 1981) unless it waives the payment of all court costs.
4. The additional thirteen dollars in court costs imposed by Section 169 (uncodified) of Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981) and Section 167 (uncodified) of Am. Sub. H.B. 694

as amended by Section 60 (uncodified) of Am. Sub. H.B. 552, 114th Gen. A. (1981) (eff. Nov. 24, 1981) must be collected in cash at the time bail is posted.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, July 30, 1982

I have before me your request for my opinion on several issues relative to the additional court costs imposed by Section 169 (uncodified) of Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981) and by Section 167 (uncodified) of Am. H.B. 694 as amended by Section 60 (uncodified) of Am. Sub. H.B. 552, 114th Gen. A. (1981) (eff. Nov. 24, 1981).

Section 169 of Am. Sub. H.B. 694 reads, in pertinent part, as follows:

Section 169. Notwithstanding section 2743.70 of the Revised Code, the court in which any person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, shall impose the sum of ten dollars as costs in the case in addition to any other court costs that the court is required by law to impose upon the offender. The court shall not waive the payment of the ten dollars court costs, unless the court waives the payment of all court costs. All such moneys shall be transmitted on the first business day of each month by the clerk of the court to the treasurer of state and deposited by the treasurer in the reparations special account.

. . . .

Notwithstanding section 2743.70 of the Revised Code, whenever a person is charged with any offense other than a traffic offense that is not a moving violation and posts bail pursuant to sections 2937.21 to 2937.46 of the Revised Code, Criminal Rule 46, or Traffic Rule 4, the court shall add to the amount of the bail the ten dollars required to be paid by the first paragraph of this section. The ten dollars shall be retained by the clerk of the court until the person is convicted, pleads guilty, forfeits bail, is found not guilty, or has the charges against him dismissed. If the person is convicted, pleads guilty, or forfeits bail, the clerk shall transmit the ten dollars to the treasurer of state who shall deposit it in the reparations special account. If the person is found not guilty or the charges against him are dismissed, the clerk shall return the ten dollars to the person.

As I stated in 1982 Op. Att'y Gen. No. 82-004, "pursuant to Section 169, the sum of ten dollars is to be imposed, in addition to any other costs charged by the court, when a person has been convicted of or has pled guilty to a charge other than a non-moving traffic offense." If, however, bail bond is furnished pursuant to R.C. 2937.21 to R.C. 2937.46, Criminal Rule 46 or Traffic Rule 4, the ten dollar cost must be added to the amount of the bail bond posted by the defendant rather than assessed in the same manner as court costs.

Section 167 of Am. Sub. H.B. 694, as amended by Section 60 of Am. Sub. H.B. 552, reads, in part, as follows:

Section 167. (A)(1) The court in which any person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, shall impose the sum of three dollars as costs in the case in addition to any other court costs that the court is required by law to impose upon the offender. All such moneys shall be transmitted on the first business day of each month by the clerk of the court to the treasurer of state and deposited by the treasurer in the General Revenue Fund. The additional costs imposed by this

section shall not be waived by the court unless all costs imposed by law upon the offender are waived.

. . . .

(B) Whenever a person is charged with any offense other than a traffic offense that is not a moving violation and posts bail pursuant to sections 2937.21 to 2937.46 of the Revised Code, Criminal Rule 46, or Traffic Rule 4, the court shall add to the amount of the bail the three dollars required to be paid by division (A)(1) of this section. The three dollars shall be retained by the clerk of the court until the person is convicted, pleads guilty, forfeits bail, is found not guilty, or has the charges against him dismissed. If the person is convicted, pleads guilty, or forfeits bail, the clerk shall transmit the three dollars to the treasurer of state who shall deposit it in the general revenue fund. If the person is found not guilty or the charges against him are dismissed, the clerk shall return the three dollars to the person.

Thus, pursuant to this section, a three-dollar cost is to be imposed as court costs when an individual has been convicted of or has pled guilty to an offense other than a non-moving traffic violation. Like the ten-dollar cost imposed by Section 169, however, the three-dollar cost is to be added to the amount of the bail bond, when such bond is furnished by the defendant pursuant to R.C. 2937.21 to R.C. 2937.46, Criminal Rule 46, or Traffic Rule 4.

Your first two questions seek clarification of the types of traffic offenses that constitute "moving violations." As was previously discussed, the court costs specified in Section 169 and Section 167 are not imposed in the case of a traffic offense which is not a moving violation. Section 169 defines a "moving violation" for purposes of that section and Section 167 as:

any violation of sections 4511.01 to 4511.78, 4511.99, and 4513.01 to 4513.36 of the Revised Code regulating the operation of vehicles, streetcars, or trackless trolleys on highways or streets, or any violation of any other law or ordinance regulating the operation of vehicles, streetcars, or trackless trolleys on highways or streets.
(Emphasis added.)

You have specifically asked what types of violations are included within the portion of Section 169 emphasized above. Pursuant to that clause, any violation of a law or ordinance which regulates the operation of vehicles, streetcars or trackless trolleys is a moving violation. Thus, it becomes necessary to determine what constitutes the regulation of the operation of such vehicles.

It is a basic premise of statutory construction that words are to be given their plain or common meaning. R.C. 1.47. "Regulate" is defined by Black's Law Dictionary 1156 (5th ed. 1979) as "to govern or direct according to rule or to bring under control of constituted authority, to limit and prohibit, to arrange in proper order, and to control that which already exists." A law or ordinance regulating the operation of a vehicle, streetcar or trackless trolley, therefore, would be one which governs, directs, limits or prohibits such operation.

The application of this definition can best be illustrated through the use of several examples. For instance, a statute or ordinance which requires the licensure of a vehicle operator is one which regulates the operation of a motor vehicle because it prohibits the operation of a vehicle by a person who does not possess the specified license. Similarly, a statute or ordinance which requires the use of headlights from dusk to dawn also must be found to regulate the operation of a motor vehicle because it limits the manner in which such a vehicle may be operated.

Your letter specifically asks whether a violation of R.C. 5547.04, which prohibits the construction of an obstruction within the bounds of a highway,

constitutes a moving violation. For a violation of R.C. 5547.04 to be considered a moving violation, that section must be found to regulate the operation of vehicles on streets or highways. An examination of R.C. 5547.04, however, indicates that the regulation of that statute is directed, not at the operation of vehicles, but, rather, at the construction of certain objects within the bounds of a highway. R.C. 5547.04 does not attempt to regulate the operation of vehicles on streets or highways. Thus, a violation of R.C. 5547.04 does not constitute a moving violation within the meaning of Section 169.

The second issue discussed in your letter relates to the collection of the ten and three dollar costs imposed by Section 167 and Section 169. Specifically, you have asked whether these costs are to be imposed on a per case or per offense basis. Both Section 167 and Section 169 state that the additional amount shall be charged by the court "as costs in the case." (Emphasis added.) Thus, it seems apparent from the plain language of the statute that the thirteen dollar cost required by Section 167 and Section 169 is to be imposed on a per case basis.

The third issue addressed in your letter concerns the waiver of court costs. As you note in your request, Section 167 and Section 169 provide that the ten and three dollar court costs shall not be waived unless the court waives all court costs in the case. You ask, however, whether a court may establish a policy of waiving all court costs in all cases in order to avoid paying any moneys into the reparations special account. In general, the waiver of court costs is a matter left to the discretion of the court; there is no statutory limitation on when, or how often, costs may be waived. Moreover, I note that Section 167 and Section 169, by permitting the waiver of the thirteen dollar court cost when all costs are waived, implicitly recognize that it is within the discretion of a court to waive court costs.

The final issue presented by your request concerns the collection of the combined thirteen dollars in court costs at the time bail bond is furnished. Specifically, you have asked whether the provisions of Section 169 and Section 167 apply to the forms of bail enumerated in R.C. 2937.22 and R.C. 2937.221. Additionally, you have asked whether the thirteen dollars is to be collected in cash at the time bail is posted or whether it may be included in the bail bond.

It is useful at the outset to set forth the requirements concerning the thirteen dollar cost which are found in Section 167 and Section 169. As was discussed above, the thirteen dollars is collected in addition to the usual amount of bail. The thirteen dollars is then retained by the clerk of the court. If the individual pleads guilty or is convicted of the offense, the amount retained by the clerk is then forwarded to the treasurer of state. If the accused is found innocent or the charges against him are dropped, the thirteen dollars is returned to him.

As was previously discussed, Section 167 and Section 169 are applicable when an individual posts bail pursuant to R.C. 2937.21 to 2937.46, Criminal Rule 46 or Traffic Rule 4. R.C. 2937.22 and R.C. 2937.221 clearly are included within the range of statutes specified in Section 167 and Section 169. Thus, the costs imposed by Section 167 and Section 169 apply when bond is posted pursuant to R.C. 2937.22 and R.C. 2937.221.

With regard to the question of whether the thirteen dollars must be collected in cash at the time bail bond is posted or whether it may be included in the bail, both Section 167 and Section 169 state that the additional amount shall be "add[ed] to the amount of the bail." At first glance, this provision would seem to require that the thirteen dollars be included in the amount of the bail. A closer examination of the statutes governing the collection of bail, however, indicate that this is not the correct interpretation.

In some instances, bail is furnished in the form of cash. See, e.g., R.C. 2937.22(A). Bail may, however, take the form of investment bonds, R.C. 2937.22(B), a surety, R.C. 2937.22(C), or even the deposit of a valid Ohio operator's or chauffeur's license, R.C. 2937.221. Obviously, in these latter forms, the bond

does not consist of cash. It would, therefore, be impossible to include the required thirteen dollar cost as a part of such non-cash bail. It must be presumed that the General Assembly intended "[a] result feasible of execution." R.C. 1.47(D). The thirteen dollar court cost must, therefore, be viewed as a charge separate from the bail posted by the defendant and collected in cash at the time bond is furnished.

Support for this conclusion can be found in the differing manner in which bail and the thirteen dollar cost imposed by Section 167 and Section 169 are treated. For instance, when bail has been posted by a person other than the defendant, such bail must be released upon the appearance of the accused in court. R.C. 2937.40. Moreover, the court may not deduct from the bail furnished by a person other than the defendant "any penalty or fine, and court costs, assessed against the accused upon his conviction or guilty plea." R.C. 2937.40(B). This section necessitates a return of the total amount of bail to such a third party. If the thirteen dollar costs constituted a part of the bail, that sum would also be returned. Consequently, there would be no retained cost which could be forwarded to the treasurer of state upon conviction or the entry of a guilty plea. In order for the system of collection set forth in Section 167 and Section 169 to function, the thirteen dollars must be separate from bail and collected in cash at the time bail is posted.

Therefore, it is my opinion, and you are advised, that:

1. A violation of a statute or ordinance which governs, directs, limits or prohibits the operation of a motor vehicle is a moving violation within the meaning of Section 169 (uncodified) of Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981).
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3. There is no limitation on when or how often a court may waive court costs, but a court may not waive the costs mandated by Section 169 (uncodified) of Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981) and Section 167 (uncodified) of Am. Sub. H.B. 694 as amended by Section 60 (uncodified) of Am. Sub. H.B. 552, 114th Gen. A. (1981) (eff. Nov. 24, 1981) unless it waives the payment of all court costs.
4. The additional thirteen dollars in court costs imposed by Section 169 (uncodified) of Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981) and Section 167 (uncodified) of Am. Sub. H.B. 694 as amended by Section 60 (uncodified) of Am. Sub. H.B. 552, 114th Gen. A. (1981) (eff. Nov. 24, 1981) must be collected in cash at the time bail is posted.