

OPINION NO. 82-004**Syllabus:**

The ten dollar cost imposed by Section 169 (uncodified) of Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981) and the three dollar cost imposed by 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 collected at the time that bail bond is furnished, when such bond is posted pursuant to R.C. 2937.21 to 2937.46, Criminal Rule 46, or Traffic Rule 4. Otherwise, such costs are to be collected in the same manner as the other court costs in a criminal case.

To: Michael Miller, Franklin County Prosecuting Attorney, Columbus, Ohio
By: William J. Brown, Attorney General, March 1, 1982

I have before me your request for my opinion in response to the following two questions:

1. Is it your opinion that the three dollars referred to in Section 167 be collected at the point the defendant executes bond in the case?
2. Also, regarding Section 169 which deals with reparation fund, Section 2743.70, 2937.21 to 2937.46, Ohio Revised Code, Criminal Rule 46 and Traffic Rule 4, do we collect this ten dollars at the time bond is executed on the defendant?

The sections to which your letter refers are part of Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981). Your second question refers to Section 169 (uncodified) of that bill. That section 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.

Thus, 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. Section 169, however, specifically states that, in cases where the defendant posts bail pursuant to R.C. 2937.21 to R.C. 2937.46, Criminal Rule 46, or Traffic Rule 4, the ten dollar cost shall be added to the amount of bail furnished by the defendant. It is clear, therefore, that when a bail bond is furnished pursuant to those sections or rules, the ten dollar charge shall be collected at the same time bail bond is posted. If bond is not furnished pursuant to the specified sections or rules, then the first paragraph of Section 169 controls. Consequently, where bond is not furnished pursuant to the sections or rules specified in Section 169, the ten dollar amount imposed by that section should be treated as a court cost and collected in the same manner as other costs in a criminal case.

Your first question refers to Section 167 (uncodified) of Am. Sub. H.B. 694. Like Section 169, Section 167, as originally enacted in Am. Sub. H.B. 694, specified a charge of three dollars which 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 violation. Section 167, as originally enacted, however, did not specifically state when the three dollar sum is to be collected. It was, therefore, unclear whether the charge imposed by Section 167 is to be collected at the time the defendant executes bond in the case.

Section 167 was subsequently amended by Section 60 (uncodified) of Am. Sub. H.B. 552, 114th Gen. A. (1981) (eff. Nov. 24, 1981) to specify that when a bail bond is furnished pursuant to R.C. 2937.21 to R.C. 2937.46, Criminal Rule 46, or Traffic Rule 4, the three dollar cost is to be added to the amount of bail furnished by the defendant. Section 167, as amended by Am. Sub. H.B. 552, now provides, in pertinent 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.

Therefore, it is my opinion, and you are advised, that the ten dollar cost imposed by Section 169 (uncodified) of Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981) and the three dollar cost imposed by 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 collected at the time that bail bond is furnished, when such bond is posted pursuant to R.C. 2937.21 to 2937.46, Criminal Rule 46, or Traffic Rule 4. Otherwise, such costs are to be collected in the same manner as the other court costs in a criminal case.