

OPINION NO. 87-023**Syllabus:**

1. The language, "[a]ll fines collected from or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen," appearing in R.C. 5503.04, includes such fines or moneys when they are collected in probate and juvenile courts.
 2. An action in a juvenile court may be considered a "prosecution" for purposes of R.C. 5503.04. (1982 Op. Att'y Gen. No. 82-062 and 1943 Op. Att'y Gen. No. 6406, p. 547 overruled to the extent that they are inconsistent with this opinion.)
 3. Court costs and additional fees may not be deducted from the gross amount of fines and moneys to be distributed under R.C. 5503.04, except that when there is a forfeiture of bail, a court adjudging forfeiture may, pursuant to R.C. 2937.36, deduct accrued costs from the amount of bail prior to distribution of the bail proceeds under R.C. 5503.04.
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To: Warren J. Smith, Director, Ohio Department of Transportation, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, May 5, 1987

I have before me your request for my opinion concerning the disposition of fines and other moneys resulting from apprehensions or arrests by state highway patrolmen pursuant to R.C. 5503.04. R.C. 5503.04 provides:

All fines collected from or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen shall be paid forty-five per cent into the state treasury and fifty-five per cent to the treasury of the municipal corporation where the case is prosecuted, if in a mayor's court. If the prosecution is in a trial court outside a municipal corporation, or outside the territorial jurisdiction of a municipal court, the fines and moneys shall be paid fifty-five per cent into the county treasury. The fines and moneys paid into the state treasury shall be credited to the highway operating fund, which is hereby created. The fines and moneys paid into a county treasury and the fines and moneys paid into the treasury of a municipal corporation shall be deposited one half to the same fund and expended in the same manner as is the revenue received from the registration of motor vehicles, and one half to the general fund of such county or municipal corporation.

If the prosecution is in a municipal court, forty-five per cent of the fines and moneys shall be paid into the state treasury to be credited to the highway operating fund, and ten per cent to the county treasury and forty-five per cent to the municipal treasury to be credited to the general fund of the county or municipal corporation. In the Auglaize county, Crawford county, Hocking county, Jackson county, Lawrence county, Madison county, Miami county, Portage county, and Wayne county municipal courts, that portion of money otherwise paid into the municipal treasury shall be paid into the county treasury.

The trial court shall make remittance of the fines and moneys as prescribed in this section, and at the same time as the remittance is made of the state's portion to the state treasury, the trial court shall notify the superintendent of the state highway patrol of the case and the amount covered by the remittance.

This section does not apply to fines for violations of division (B) of section 4513.263 of the Revised Code, or for violations of any municipal ordinance that is substantively comparable to that division, all of which shall be delivered to the treasurer of state as provided in division (E) of section 4513.263 of the Revised Code.¹ (Footnote and emphasis added.)

Specifically, you have inquired whether all fines collected from or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen include such

¹ R.C. 4513.263 imposes fines for failing to wear occupant-restraining devices while riding as a front-seat passenger in or operating an automobile. Such fines are deposited in the "Seat Belt Education Special Account" of the State Highway Safety Fund. See R.C. 4513.263(E).

finer or moneys from probate or juvenile courts. Additionally, you have inquired whether court costs and other fees can be deducted before the remainder is distributed, or if the gross amount of the moneys collected should be distributed in accordance with R.C. 5503.04.

It is first necessary to discuss the jurisdiction of the probate and juvenile courts and their participation in the collection of fines and bonds from persons apprehended or arrested by state highway patrolmen. The juvenile court is a court of record within the division of domestic relations or the division of probate of the court of common pleas, except in Cuyahoga and Hamilton counties, where the juvenile courts are separate divisions of the courts of common pleas. See R.C. 2151.011(A)(1); R.C. 2151.07. The juvenile court exercises the powers conferred in R.C. 2151.01-.99. See R.C. 2151.07. The probate court "means the probate division of the court of common pleas, and 'probate judge' means the judge of the court of common pleas who is judge of the probate division." R.C. 2101.01. While the probate court does not normally exercise jurisdiction over matters pertaining to apprehensions or arrests by state highway patrolmen, see R.C. 2101.24; R.C. 2101.25, the probate court, as indicated above, may be the division of the court of common pleas within which a juvenile court is created. Moreover, when a juvenile court judge is absent from a county, a judge from the court of common pleas or a probate judge may be appointed to act in his place.² R.C. 2151.07. See also Children's Home v. Fetter, 90 Ohio St. 110, 106 N.E. 761 (1914) (probate courts acting as juvenile courts under R.C. 2151.01 et seq., are courts of record, and where jurisdiction of the person and subject matter has been acquired, their judgments are conclusive). Where the juvenile court is created within the probate division of the court of common pleas, any fines collected may be viewed as arising in either the juvenile or probate court. See, e.g., 1939 Op. Att'y Gen. No. 1478, vol. III, p. 2175 (a juvenile court created within a probate court by virtue of R.C. 2151.07 is subject to R.C. 3375.52, which provides for the distribution of moneys collected by "the court of common pleas and the probate court").

In State ex rel. Board of Trustees of the Akron Law Library Association v. Vogel, 169 Ohio St. 243, 159 N.E.2d 220 (1959), the Supreme Court observed that apprehensions and arrests by state highway patrolmen usually involve violations of state traffic laws. If R.C. 5503.04 is applicable to juvenile or probate courts, it will come into play most often when persons are tried in juvenile or probate court for violating state traffic laws, and most commonly when juveniles are found to be juvenile traffic offenders pursuant to R.C. 2151.356(A)(1) and fined therefor.³ A "juvenile traffic offender" is defined in R.C. 2151.021 as "[a] child who violates any traffic law, traffic ordinance, or traffic regulation of this state, the United States, or of any political subdivision of this state."

² I assume, for purposes of this request, that your inquiry concerns probate courts which are either a division of the court of common pleas within which a juvenile court exists or probate courts when the judge thereof is acting in behalf of the juvenile court judge.

³ See R.C. 5503.01 and R.C. 5503.02 for a complete list of the duties and powers of state highway patrolmen.

Pursuant to R.C. 2151.356(A)(1), the juvenile court may impose a fine and costs when it finds that a child is a "juvenile traffic offender."

R.C. 5503.04 expressly applies to moneys collected in a mayor's court, a municipal court, and in "a trial court outside a municipal corporation, or outside the territorial jurisdiction of a municipal corporation," but it is unclear from the language used whether fines collected from the courts of common pleas and the divisions thereof (for example, the juvenile court within the probate division of the court of common pleas, or within the domestic relations division of the court of common pleas, or as a separate division of the court of common pleas) are to be distributed in accordance with R.C. 5503.04. That portion of R.C. 5503.04 which provides "[i]f the prosecution is in a trial court outside a municipal corporation, or outside the territorial jurisdiction of a municipal court, the fines and moneys shall be paid fifty-five per cent into the county treasury" has been held to apply to the particular type of court conducting the trial, and not the geographical location where the trial is held (emphasis added). In Village of Whitehall v. Lauderbaugh, 62 Ohio L. Abs. 305, 107 N.E.2d 140 (Franklin County 1951), the court examined the predecessor provision, G.C. 1183-4 (and earlier G.C. 1183-5), to the above portion of R.C. 5503.04. G.C. 1183-4 provided that "if such prosecution is in a trial court outside of an incorporated city or village such money shall be paid one-half into the county treasury."⁴ In interpreting this provision, the court determined that a prosecution before a justice of the peace who conducted court within the limits of an incorporated village which was also within the township was a prosecution in a township court, notwithstanding the fact that the geographical location of the trial court was in the village. Since the prosecution was in a township court, even though geographically located within the village, it was considered to be "outside of an incorporated city or village" for purposes of the statute so that the moneys were to be paid one-half into the county treasury. The court held that the village was not entitled to share in the funds. See 1961 Op. Att'y Gen. No. 2332, p. 343 (fines collected in county courts from persons arrested by state highway patrolmen should be distributed as provided in R.C. 5503.04); 1955 Op. Att'y Gen. No. 5965, p. 597 (fines collected in traffic cases prosecuted in the common pleas court should be distributed in accordance with R.C. 4513.35⁵ except where the arrest has been made by a state highway patrolman, in which case the funds should be paid, subject to R.C. 3375.53, one-half to the county treasury

⁴ R.C. 5503.04 was amended in 1955 to change the disposition of moneys from a fifty/fifty division to the current forty-five/fifty-five division. 1955-56 Ohio Laws 773-74 (Am. H.B. 368, eff. Oct. 5, 1955).

⁵ R.C. 4513.35 provides:

All fines collected under sections 4511.01 to 4511.78, 4511.99, and 4513.01 to 4513.37, of the Revised Code shall be paid into the county treasury and, with the exception of that portion distributed under section 3375.53 of the Revised Code, shall be placed to the credit of the fund for the maintenance and repair of the highways

and one-half to the state treasury pursuant to R.C. 5503.04); 1939 Op. Att'y Gen. No. 402, vol. I, p. 512 (for purposes of G.C. 1181-5,⁶ the court of common pleas is, in a jurisdictional sense, outside the municipality and is other than a municipal court). See also Barth ex rel. Zielonka, 107 Ohio St. 154, 140 N.E. 650 (1923); 1934 Op. Att'y Gen. No. 2762, vol. I, p. 794. Courts of common pleas and the divisions thereof are thus considered trial courts outside the jurisdiction of a municipal court, and are not excluded from R.C. 5503.04 simply because they are not expressly mentioned therein. I must note, however, that in Van Wert Law Library Association v. Stuckey, 60 Ohio L. Abs. 1, 94 N.E.2d 32 (Van Wert County C.P. 1949), it was determined that G.C. 1183-4 (now appearing at R.C. 5503.04) was not applicable to cases prosecuted in the common pleas court because an arrest could not be made by a state highway patrolman for purposes of prosecution in a court of common pleas. More specifically, the court noted that "when charges are prosecuted in the court of common pleas, they cannot be heard on an affidavit of a state highway patrolman, but must be brought upon an indictment, information, or an affidavit filed by the prosecuting attorney. Arrest is then made by the sheriff, even though a person is actually in custody." [R.C. 2941.36] Id. at 10, 94 N.E.2d 43. Thus, the court concluded that since a state highway patrolman could not secure an arrest for prosecution in common pleas court since he lacked authority to serve an indictment, information or warrant, R.C. 5503.04 was not applicable to cases prosecuted in common pleas court. I decline to follow this reasoning in that R.C. 5503.04 is not limited to arrests by state highway patrolmen. Since R.C. 5503.04 also applies to apprehensions, it is clear that the General Assembly intended that all fines ultimately arising from detentions made by state highway patrolmen be distributed pursuant to that statute.

R.C. 5503.02 vests the state highway patrol with, among other duties, the authority to "enforce, on all roads and highways,...the laws relating to the use of vehicles on the

within such county, except that all fines for violations of division (B) of section 4513.263 shall be delivered to the treasurer of state as provided in division (E) of section 4513.263 of the Revised Code, that all fines collected from, or moneys arising from bonds forfeited by, persons apprehended or arrested by state highway patrolmen shall be distributed as provided in section 5503.04 of the Revised Code, and that, subject to division (E) of section 4513.263 of the Revised Code, one-half of all fines collected from, and one-half of all moneys arising from bonds forfeited by, persons apprehended or arrested by a township constable or other township police officer shall be paid to the township treasury to be placed to the credit of the general fund.

⁶ G.C. 1181-5 provided that "all fines collected from, or moneys arising from bonds forfeited by, persons apprehended or arrested by state highway patrolmen and tried in a court of common pleas shall be paid one-half to the state treasury and one-half to the county treasury."

highways" and to "regulate the movement of traffic on the roads and highways of the state." See also R.C. 5503.01 ("patrolmen shall be vested with the authority of peace officers for the purpose of enforcing the laws of the state which it is the duty of the patrol to enforce, and may arrest, without warrant, any person who, [in their presence], is engaged in the violation of any such laws"). The authority conferred by R.C. 5503.02 necessarily includes the authority to apprehend and arrest persons, including juveniles, for violations of state traffic laws. The juvenile or probate court may be a division of the court of common pleas and a juvenile may be fined therein for a traffic violation. I decline to follow Stuckey insofar as it fails to recognize that prosecutions for state traffic laws may be brought in the court of common pleas and the divisions thereof after an apprehension or arrest is made by a state highway patrolman. I note that in 1955, after Stuckey was decided, one of my predecessors concluded that:

Fines collected in traffic cases prosecuted in the common pleas court should be paid by the clerk of such court as directed in [R.C. 4513.35], and with the exception of that portion thereof which is distributed to the local law library as provided in [R.C. 3375.53], such funds should be paid into the county treasury in all such cases except those in which the arrest has been made by a member of the state highway patrol, in which case such funds should be paid, subject to [R.C. 3375.53], one-half to the county treasury and one-half to the state treasury [pursuant to G.C. 1181-5, the predecessor to R.C. 5503.04]. (Emphasis added.)

1955 Op. No. 5965 at p. 602. I am unaware of any case or attorney general opinion which has followed the restrictive reasoning in Stuckey so as to exclude fines obtained in the court of common pleas, and the divisions thereof, from distribution under R.C. 5503.04. See State ex rel. Board of Trustees of The Akron Law Library Association v. Vogel, 169 Ohio St. 243, 249, 159 N.E.2d 220, 224 (1959) (R.C. 4513.35, 5503.04, and 3375.53 provide "for the disposition of fines, etc., collected by any court either as the result of apprehensions or arrests by state highway patrolmen or for prosecutions under Chapters 4301 and 4303...and [R.C. 4511.01-.78, 4511.99 and 4513.01-.37] or both") (emphasis added). To the contrary, as indicated above, the historical development of R.C. 5503.04 illustrates that fines collected from courts in addition to those expressly mentioned are intended to be distributed in accordance with R.C. 5503.04 when the arrests or apprehensions leading up to the proceedings in such courts were made by state highway patrolmen.

R.C. 5503.04 sets forth a distribution scheme for "[a]ll fines collected from or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen" (emphasis added). Forty-five per cent of the money collected is to be paid into the state treasury to be credited to the highway operating fund. The specific allocation of the remaining fifty-five per cent is dependent upon the court in which the case is prosecuted. R.C. 2151.356(A)(1) clearly contemplates that fines may be imposed upon juveniles who are found to be juvenile traffic offenders as defined in R.C. 2151.021. Accordingly, I find no reason to exclude such fines from distribution under R.C. 5503.04.

I understand, however, from the correspondence you have had with a member of my staff, that some probate and juvenile courts contend that fines collected from juvenile traffic offenders are exempt from R.C. 5503.04. This contention is premised upon the analysis applied in 1982 Op. Att'y Gen. No. 82-062, in which my predecessor concluded in the syllabus that:

Fines imposed upon juvenile traffic offenders pursuant to R.C. 2151.356(A) must be paid to the general fund of the county treasury pursuant to R.C. 2949.11⁷ rather than to the county law library association pursuant to R.C. 3375.52 or R.C. 3375.53. (1943 Op. Att'y Gen. No. 6406, p. 547, approved and followed in part.) (Footnote added.)

Although Op. No. 82-062 does not consider your specific question regarding the application of R.C. 5503.04 to juvenile or probate courts, it is relevant to this inquiry in that it considers the application of related statutes, R.C. 3375.52 and R.C. 3375.53.⁸ The former statute provides that all moneys arising from fines levied "for offenses and misdemeanors brought for prosecution in such [common pleas and probate courts] in the name of the state" shall be paid to the board of trustees of the law library association. R.C. 3375.53 provides that fifty per cent of all moneys arising from fines levied "in any court in that county for offenses brought for prosecution under Chapters 4301. and 4303. of the Revised Code and the state traffic laws" shall be paid to the board of trustees of the county law library association.⁹ (Emphasis added.)

The conclusion reached in Op. No. 82-062, excluding juvenile courts from R.C. 3375.52 and R.C. 3375.53, was founded upon the analysis used in 1943 Op. Att'y Gen. No. 6406, p. 547. 1943 Op. No. 6406 concluded that a juvenile court has no authority to prosecute and convict a juvenile of a criminal offense since the juvenile courts serve only to make status determinations regarding juveniles. A juvenile court, at the time the 1943 opinion was written, had authority only to find a

⁷ R.C. 2949.11 provides, in part: "[u]nless otherwise required in the Revised Code, an officer who collects a fine shall pay it into the treasury of the county in which such fine was assessed."

⁸ R.C. 3375.53 has been held to be in pari materia to R.C. 5503.04 and R.C. 4513.35. State ex rel. Board of Trustees of Akron Law Library Association v. Vogel, 169 Ohio St. 243, 159 N.E.2d 220 (1959). Thus, in order to respond to your question, it is necessary to consider these statutes in relation to one another. See generally State ex rel. Pratt v. Weygandt, 164 Ohio St. 463, 132 N.E.2d 191 (1956) (syllabus, paragraph two) ("[s]tatutes relating to the same matter or subject, although passed at different times and making no reference to each other, are in pari materia and should be read together to ascertain and effectuate if possible the legislative intent").

⁹ R.C. 3375.52 establishes a ceiling of twelve hundred fifty dollars payable per year to the trustees of the law library association. Similarly, R.C. 3375.53 sets a yearly limit of twelve hundred dollars payable to the trustees of the law library association as a result of violations arising under R.C. Chapters 4301. and 4303.

child to be delinquent, neglected, crippled or dependent.¹⁰ G.C. 1639-23 (now R.C. 2151.23(A)(1)). Since adjudications in juvenile court do not take the form of criminal prosecutions or carry the consequences of a criminal conviction, my predecessor reasoned in Op. No. 82-062 that a child could not be "prosecuted" under R.C. 3375.52 or R.C. 3375.53. I do not agree with the analysis used in Op. No. 82-062 for purposes of R.C. 5503.04 and similar statutes governing the distribution of fines and bonds arising from traffic violations. Although it is true that a juvenile proceeding is not a criminal prosecution, see In re Agler, 19 Ohio St. 2d 70, 249 N.E.2d 808 (1969), the mere use of the term "prosecution" cannot provide a basis for excluding juvenile courts from statutory provisions using that word. I note, that while R.C. 3375.52 and R.C. 3375.53 utilize the term "prosecution," they do not specify that such prosecutions must be criminal in nature. The term "prosecution" is used not only in relation to criminal actions. It is also used to refer to the commencement of a legal action or proceeding which is carried to its conclusion. See generally Voigt v. Rush D. Hiller Co., 44 Ohio App. 244, 184 N.E. 34 (Stark County 1932); Public Service Traffic Bureau, Inc. v. Haworth Marble Co., 40 Ohio App. 255, 178 N.E. 703 (Cuyahoga County 1931). The dictionary definition of the term includes "the conducting of any lawsuit," Webster's New World Dictionary 1141 (2d college ed. 1978); "[t]he term is also used respecting civil litigation, and includes every step in action, from its commencement to its final determination." Black's Law Dictionary 1099 (5th ed. 1979). R.C. 2307.01 defines an "action," under the chapter dealing with civil actions as "an ordinary proceeding in a court of justice, involving process, pleadings, and ending in a judgment or decree, by which a party prosecutes another for the redress of a legal wrong, enforcement of a legal right, or the punishment of a public offense" (emphasis added). Clearly, the term "prosecution" for purposes of R.C. 5503.04, in regard to violations of state traffic laws, means nothing more than a legal proceeding against an individual accused of violating a state traffic law.

The General Assembly has used forms of the term "prosecute," in relation to juvenile court actions, without intending the term to imply criminal consequences. For example, R.C. 2307.61 permits a property owner to bring a civil action to recover damages for willful damage or theft to property. It distinguishes a criminal prosecution from a prosecution in juvenile court, but utilizes the term "prosecute" in regard to the juvenile proceeding.¹¹ Similarly, R.C. 2151.3511, concerning the admissibility

¹⁰ The juvenile court may now determine a child to be a "juvenile traffic offender" and impose a fine not to exceed fifty dollars and costs under R.C. 2151.356(A). See note 2, supra.

¹¹ R.C. 2307.61(A)(2) permits a property owner to recover compensatory damages, exemplary damages, and attorney fees if, in addition to other requirements, the property owner serves a written demand for payment of the value of the property at least thirty days prior to filing the action. One of the requirements of the written demand is that it indicate:

That if [the person upon whom demand is served]

into evidence of videotaped depositions of child sex offense victims, refers throughout to the "prosecution" in the juvenile court proceeding. See, e.g., R.C. 2151.3511(A)(1) ("In any proceeding in juvenile court involving a complaint in which a child is charged with [a sex offense]...the juvenile judge, upon motion of an attorney for the prosecution, shall order that the testimony of the child victim be taken by deposition"). In addition, Juv. R. 22(F) provides that, in taking an appeal from the granting of a motion to suppress evidence, the appeal "shall be diligently prosecuted").

Moreover, the case law interpreting R.C. 5503.04, as well as R.C. 4513.35 and R.C. 3375.53, does not place emphasis upon the term "prosecution" to exclude any courts from those provisions. To the contrary, in State ex rel. Board of Trustees of The Akron Law Library Association v. Vogel, 169 Ohio St. 243, 249, 159 N.E.2d 220, 224 (1959), the Supreme Court of Ohio concluded:

Sections 4513.35, 5503.04 and 3375.53, Revised Code, are in pari materia and are special statutes providing for the disposition of fines, etc., collected by any court either as the result of apprehensions or arrests by state highway patrolmen or for prosecutions under Chapters 4301 and 4303, Revised Code, and Sections 4511.01 to 4511.78, inclusive, 4511.99 and 4513.01 to 4513.37, inclusive, of the Revised Code, or both. (Emphasis added.)

Following Vogel, the court in State ex rel. Akron Law Library Association v. Weil, 16 Ohio App. 2d 151, 158, 242 N.E.2d 664, 668 (Summit County 1968), determined that:

under Section 4513.35, Revised Code, where the arrest for a traffic offense, under the sections of the Code therein named, is by one other than a state highway patrolman, with prosecution and a money fine paid, 50 per cent of such fine, under Section 3375.53, Revised Code, is paid to the Library through the county treasurer, or Municipal Court, or mayor's court, or Juvenile Court. (Emphasis added.)

Thus, the court in Weil found R.C. 3375.53 to be applicable to fines collected in juvenile courts. Accordingly, an action in juvenile court may be considered a "prosecution" for purposes of R.C. 5503.04 and similar statutes governing the distribution of fines and bonds. (1982 Op. Att'y Gen. No. 82-062 and 1943 Op. Att'y Gen. No. 6406, p. 547 overruled to the extent that they are inconsistent with this opinion.)

It is, therefore, my conclusion that R.C. 5503.04 applies to fines collected in juvenile or probate courts from persons apprehended or arrested by state highway patrolmen. I note, however, that R.C. 5503.04 is not the sole statute to be

makes payment of the amount...or...enters into an agreement with the property owner...and makes such payment in accordance with the terms of the agreement, he cannot be criminally prosecuted or prosecuted in juvenile court....(Emphasis added.)

R.C. 2307.61(C)(2).

considered in distributing fines collected in juvenile or probate courts. R.C. 4513.35 and R.C. 3375.53 must also be considered, since the three sections are in pari materia. See State ex rel. Board of Trustees of The Akron Law Library Association v. Vogel, 169 Ohio St. 243, 159 N.E.2d 220 (1959); State ex rel. Akron Law Library Association v. Weil, 16 Ohio App. 2d 151, 242 N.E.2d 664 (1968); Van Wert County Law Library Association v. Stuckey, 60 Ohio L. Abs. 1, 94 N.E.2d 32 (Van Wert County C.P. 1949).

I turn now to your second question in which you inquire "[w]hether court costs, additional fees, etc. can be deducted first and the remainder distributed 45%-55%, or if the gross amount of the moneys collected should be distributed 45%-55%." R.C. 5503.04 provides, in part, that "[a]ll fines collected from or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen shall be" subject to the distribution set forth in R.C. 5503.04 (emphasis added). The statute does not expressly mention whether costs and fees may be deducted from the fines or moneys collected prior to distribution.

A brief explanation of the terms costs, fees, and fines will be helpful in analyzing your question. Costs are "the statutory fees to which officers, witnesses, jurors, and others are entitled for their services in an action...and which the statutes authorize to be taxed and included in the judgment." Centennial Ins. Co. v. Liberty Mutual Ins. Co., 69 Ohio St. 2d 50, 430 N.E.2d 925, 926 (1982). Fees include such things as filing fees, R.C. 1901.26(B), fees of a jury which are to be taxed as costs, R.C. 1901.26(C), witness fees, R.C. 1901.26(D), and charges for the publication of legal notices which may be taxed as costs, R.C. 1901.26(H). See also R.C. Chapter 2335. (providing for the imposition and collection of fees and costs in the court of common pleas). The term fines, however, commonly refers to the monetary penalties imposed against a violator for the commission of various offenses, see, e.g., R.C. 2929.21 (penalties for misdemeanors); R.C. 2929.11 (penalties for felonies), and fines are separate and distinct from costs and fees. The Supreme Court of Ohio has held that there is "a major distinction between fines and costs....In both criminal and civil cases, costs are taxed against certain litigants for the purpose of lightening the burden on taxpayers financing the court system." Strattman v. Studt, 20 Ohio St. 2d 95, 102, 253 N.E.2d 749, 754 (1969).

I assume that your question relates to a case in which a fine has been collected from a particular individual, or a bond has been forfeited by that individual, in a situation that is subject to R.C. 5503.04, but that court costs or additional fees have not been paid. R.C. 5503.04 does not address the deduction of costs or fees from fines or forfeited bond moneys in the event that the costs or fees are not paid by the offender, and I am aware of no basis upon which the authority to make such a deduction may be implied from the language of R.C. 5503.04. R.C. 2937.36 does, however, set forth a limited circumstance in which costs may be deducted from bail proceeds. When there is a bail forfeiture, the court adjudging forfeiture is expressly authorized by R.C. 2937.36 to satisfy the amount of accrued costs from the amount of bail before distributing the moneys arising from the forfeiture. R.C. 2937.36(A) directs that the magistrate or clerk of court adjudging forfeiture shall proceed "to deal with the sum [of bail] deposited as if the same were imposed as a fine for the

offense charged and distribute and account for the same accordingly provided that prior to doing so, he may satisfy accrued costs in the case out of the fund." (Emphasis added.) In 1960 Op. Att'y Gen. No. 1466, p. 415, one of my predecessors considered the relationship of R.C. 5503.04 to R.C. 2937.36, concluding that although R.C. 5503.04 provides that "moneys arising from bonds forfeited...shall be paid," R.C. 2937.36 provides that accrued costs in the case may be satisfied out of the bail forfeiture before paying out the forfeiture. Thus, where "costs have been deducted the 'moneys arising' are the funds left after the deduction." Id. at 418. See also 1964 Op. Att'y Gen. No. 1410, p. 2-361 (various bail bonds ordered forfeited by the municipal court are subject to R.C. 1901.31(F) and R.C. 2937.36, therefore requiring distribution after deduction of the municipal court costs); 1960 Op. Att'y Gen. No. 1372, p. 353 (a magistrate or clerk of court adjudging a bail forfeiture arising under R.C. 1531.01-.26 and R.C. 1533.01-.69 may satisfy the amount of accrued costs in the case out of the amount of bail before paying the forfeiture to the Director of Natural Resources). I conclude, therefore, that R.C. 5503.04 does not authorize the deduction of court costs and additional fees from the gross amount of fines and moneys to be distributed pursuant to its provisions, but that, when there is a bail forfeiture, a court adjudging forfeiture may, pursuant to R.C. 2937.36, deduct accrued costs from the amount of bail prior to distribution of the bail proceeds under R.C. 5503.04.

It is, therefore, my opinion, and you are advised that:

1. The language, "[a]ll fines collected from or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen," appearing in R.C. 5503.04, includes such fines or moneys when they are collected in probate and juvenile courts.
2. An action in a juvenile court may be considered a "prosecution" for purposes of R.C. 5503.04. (1982 Op. Att'y Gen. No. 82-062 and 1943 Op. Att'y Gen. No. 6406, p. 547 overruled to the extent that they are inconsistent with this opinion.)
3. Court costs and additional fees may not be deducted from the gross amount of fines and moneys to be distributed under R.C. 5503.04, except that when there is a forfeiture of bail, a court adjudging forfeiture may, pursuant to R.C. 2937.36, deduct accrued costs from the amount of bail prior to distribution of the bail proceeds under R.C. 5503.04.