

OPINION NO. 74-077

Syllabus:

In a municipal court criminal action involving a violation of state law the fees of jurors and witnesses are to be taxed as costs and paid out of the county treasury which is to be reimbursed by the clerk of courts when the costs have been paid. (Branch one of the syllabus in Opinion No. 72-063 modified to the extent indicated.)

To: Stephan M. Gabalac, Summit County Pros. Atty., Akron, Ohio
By: William J. Brown, Attorney General, September 13, 1974

In my Opinion No. 72-063, issued to you on August 7, 1972, I discussed the subject of taxable costs in a municipal court criminal proceeding initiated by an officer of the State Highway Patrol. The specific item raised by the request was the amount of court reporter's fees to be allowed as costs. The questions posed were, however, phrased in general terms, and the syllabus of the Opinion gave the following general answers:

1. The court costs in a municipal court, in a criminal action, are properly payable from the municipal treasury and not from the county treasury.

2. Taxable costs in a municipal court, are limited to those amounts authorized by statute in a common pleas court by virtue of Section 1901.26(A), Revised Code.

Some modification of this holding is required in the light of specific statutory provisions as to the fees payable to jurors and witnesses, both of which are includable in the bill of costs.

The selection and impaneling of jurors for any case in municipal court is governed by R.C. 1901.25 which provides, insofar as here pertinent, that jurors in municipal court

"* * *shall receive the same fees as jurors in the court of common pleas. The fees of jurors in any criminal case involving the violation of state law shall be paid out of the county treasury, and in cases involving a violation of a municipal ordinance shall be paid out of the treasury of the municipal corporation. (Emphasis added.)

Furthermore, the Revised Code provides that the jurors' fees shall be included in the bill of costs, and that the treasury which paid the jurors shall be reimbursed upon payment of the costs by the convicted defendant. This provision appears in R.C. 2947.23 which 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." (Emphasis added.)

Under these Sections of the Revised Code it is clear, therefore, that in a criminal action in municipal court, initiated by an officer of the State Highway Patrol, the fees of the jurors are to be paid from the county treasury, which is to be reimbursed by the clerk of courts after the costs have been paid. See Opinion No. 1132, Opinions of the Attorney General for 1952.

The same is true of the fees to be paid to the witnesses in such a case. Provision for the fixing of costs in municipal court actions is made in R.C. 1901.26 which reads in part:

"Costs in a municipal court shall be fixed and taxed as follows:

"(A) The municipal court, by rule, may establish a schedule of fees and costs to be taxed in any action, either civil or criminal, which shall not exceed the fees and costs provided by law for a similar action or proceeding in the court of common pleas.

* * * * *

"(D) In any * * * criminal action or proceeding, witnesses' fees shall be fixed in accordance with sections * * * 2335.08 of the Revised Code.

* * * * *

(Emphasis added.)

The Section incorporated by reference in the above quotation, R.C. 2335.08, provides for the payment of witnesses' fees in criminal cases in the court of common pleas. In pertinent part, it reads as follows:

"* * * In state cases such fees shall be paid out of the county treasury, and in ordinance cases they shall be paid out of the treasury of the municipal corporation, upon the certificate of the judge or magistrate, and they shall be taxed as costs.

"When the fees enumerated by this section have been collected from the judgment debtor, they shall be paid to the public treasury from which such fees were advanced."

(Emphasis added.)

In view of the foregoing it is my opinion, and you are so advised, that in a municipal court criminal action involving a violation of state law the fees of jurors and witnesses are to

be taxed as costs and paid out of the county treasury which is to be reimbursed by the clerk of courts when the costs have been paid. (Branch one of the syllabus in Opinion No. 72-063 modified to the extent indicated.)