

OPINION NO. 85-057**Syllabus:**

1. The fees collected by the appropriate clerks of court pursuant to Sub. H.B. 319, 115th Gen. A. (1984) (eff. Dec. 26, 1984) and Am. Sub. S.B. 219, 115th Gen. A. (1984) (eff. Jan. 8, 1985) are to be collected only in cases filed subsequent to the effective dates of those acts.
2. The fee collected pursuant to R.C. 3109.14 by the county clerk of courts "[u]pon the filing for a divorce decree. . .or a decree of dissolution" is to be collected upon the filing of the complaint for divorce or the petition for dissolution.
3. The fee collected by the county clerk of courts pursuant to R.C. 3109.14 must be forwarded to the Treasurer of State, irrespective of the subsequent dismissal of the action which generated the fee.
4. The fee collected by the county clerk of courts pursuant to R.C. 3109.14 must be forwarded to the Treasurer of State not later than the fifth day of the month immediately following the month in which the fee is collected.

To: Ronald L. Collins, Tuscarawas County Prosecuting Attorney, New Philadelphia, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, September 17, 1985

You have requested my opinion on several questions concerning the interpretation of R.C. 3109.14. I have rephrased your questions as follows:

1. Are the fees collected by the county clerk of courts pursuant to Sub. H.B. 319, 115th Gen. A. (1984) (eff. Dec. 26, 1984) and Am. Sub. S.B. 219, 115th Gen. A. (1984) (eff. Jan. 8, 1985) to be collected in cases filed prior to the effective dates of those bills?
2. Pursuant to R.C. 3109.14, is the fee collected by the county clerk of courts "[u]pon the filing for a divorce decree. . . or a decree of dissolution" to be collected upon the filing of the complaint or petition, or upon the filing of the journal entry granting the divorce or dissolution?
3. If the answer to question number two is that the fee is collected upon the filing of the journal entry, how is the fee collected in cases filed prior to the effective date of Sub. H.B. 319?
4. If the answer to question number two is that the fee is collected upon the filing of the complaint or petition and the complaint or petition is dismissed, is the fee still forwarded to the State of Ohio?
5. Is the transmission date upon which this fee is to be sent to the Treasurer of State the date of the final order or the date upon which the fee is collected if these dates are different?

R.C. 3109.13-.18 were enacted by Sub. H.B. 319, 115th Gen. A. (1984) (eff. Dec. 26, 1984) and concern, inter alia, establishment of the children's trust fund special account in the state special revenue fund. See R.C. 3109.14. Moneys in this account are used for the purpose of preventing child abuse and child neglect, see R.C. 3109.17; R.C. 3109.18, and are derived from various specified sources, see R.C. 3109.14; R.C. 3109.16. R.C. 3109.14 provides that the fees collected by courts of common pleas pursuant to that section are to be deposited in the children's trust fund special account, and reads in pertinent part:

Upon the filing for a divorce decree under section 3105.10 or a decree of dissolution under section 3105.65 of the Revised Code, a court of common pleas shall charge and collect a fee of ten dollars in addition to any other court costs or fees. The county clerk of courts may retain an amount of each additional fee that he collects, not to exceed three per cent of the amount of the additional fee, to be used for costs directly related to the collection of the fee and the forwarding of the fee to the treasurer of state.

The additional fees collected under this section during each month shall be forwarded not later than the fifth day of the immediately following month to the treasurer of state, who shall deposit the fees to the credit of the children's trust fund special account. (Emphasis added.)

Because I believe that resolution of your second question is central to an analysis of your remaining questions, I will address it first. In your second question you ask whether the fee collected in connection with a decree of divorce or a decree of dissolution is to be collected upon the filing of the complaint for divorce or the petition for dissolution or upon the filing of the journal entry granting the divorce or dissolution. With certain exceptions not herein applicable, the Ohio Rules of Civil Procedure apply in actions for divorce and dissolution. See Ohio R. Civ. P. 75(A); R.C. 3105.03; R.C. 3105.62. Ohio R. Civ. P. 3(A) provides that, "[a] civil action is commenced by filing a complaint with the court. . . ." Thus, an

action for divorce is initiated upon filing a complaint. Because there are no adversary parties in an action for dissolution of marriage, see R.C. 3105.62, the filing of a petition, rather than a complaint, initiates an action for dissolution of a marriage. Just as the filing of a complaint or petition initiates an action for divorce or dissolution, the journalization of the judgment effectuates a judgment in the action. Ohio R. Civ. P. 58 provides in part:

upon a general verdict of a jury, or upon a decision announced, the court shall promptly cause the judgment to be prepared and, the court having signed it, the clerk shall thereupon enter it. A judgment is effective only when filed with the clerk for journalization. Entry of the judgment shall not be delayed for the taxing of costs.

Turning to the language of the statute in question, R.C. 3109.14 states that a fee is to be collected, "[u]pon the filing for a divorce decree under section 3105.10 or a decree of dissolution under section 3105.65 of the Revised Code." (Emphasis added.)¹ In the absence of a statutory definition, words are generally to be construed in accordance with their common, ordinary meaning. R.C. 1.42; Baker v. Powhatan Mining Co., 146 Ohio St. 600, 67 N.E.2d 714 (1946). The operative language of R.C. 3109.14 is filing "for" a decree. Webster's New World Dictionary, 544 (2d college ed. 1978) defines "for" as "in order to be, become, get, have, keep, etc." In this sense, filing "for" a decree of divorce or dissolution plainly signifies the filing of a complaint or petition in order to become divorced, or in order to receive a divorce decree or a decree of dissolution. In contrast to the word "of," which might indicate that the fee be assessed upon the filing of the journal entry granting the divorce or dissolution, filing "for" a decree conveys the sense of initiating a process. To construe R.C. 3109.14 as referring to the assessment of a fee upon the filing of the journal entry granting the divorce or dissolution is inconsonant with the legislative use of the preposition "for." As the legislature is presumed to have used the words of a statute advisedly, see Wachendorf v. Shaver, 149 Ohio St. 231, 78 N.E.2d 370 (1948), I conclude that the language of R.C. 3109.14 which states that a fee shall be charged and collected, "[u]pon the filing for a divorce decree. . . or a decree of dissolution" refers to the filing of the complaint or petition, and not the filing of the journal entry granting the divorce or dissolution.

I turn now to the remainder of your questions. Your first question asks whether the fees collected by the county clerk of courts are to be collected in cases filed prior to the effective date of R.C. 3109.13-.18. Ohio Const. art. II, §28 provides that the General Assembly "shall have no power to pass retroactive laws."

¹ R.C. 3105.10 provides in part:

(A) The court of common pleas shall hear any of the causes for divorce or annulment charged in the complaint and may, upon proof to the satisfaction of the court, pronounce the marriage contract dissolved and both of the parties released from their obligations.

R.C. 3105.65 reads in part:

(B) If, upon review of the testimony of both spouses, and of the report of the investigator pursuant to Civil Rules, the court approves the separation agreement and any amendments thereto agreed upon by the parties, it shall grant a decree of dissolution of marriage incorporating the separation agreement. A decree of dissolution of marriage has the same effect upon the property rights of the parties, including rights of dower and inheritance, as a decree of divorce. The court has full power to enforce its decree, and retains jurisdiction to modify all matters of custody, child support, and visitation.

Neither of these statutes addresses the filing of a complaint or a judgment.

Further, R.C. 1.48 provides that a statute is presumed to be prospective in its operation. As was stated in 1981 Op. Att'y Gen. No. 81-067 at 2-277:

R.C. 1.48 states: "A statute is presumed to be prospective in its operation unless expressly made retrospective." This rule of statutory construction has also been independently recognized by the courts. See, e.g., Smith v. Ohio Valley Insurance Co., 27 Ohio St. 2d 268, 276-77, 272 N.E.2d 131, 136 (1971) ("[a] statute, employing operative language in the present tense, does not purport to cover past events of a similar nature. As a general rule, a statute is prospective in its operation 'unless its terms show clearly an intention that it should operate retrospectively' " (footnote and citations omitted)); Joseph Schonthal Co. v. Village of Sylvania, 60 Ohio App. 407, 416, 21 N.E.2d 1008, 1012 (Lucas County 1938) ("[w]hen the intention of the Legislature is to give a statute a retroactive effect, such intention must not be left to inference or construction, but must be manifested by express and unequivocal expression. If it is doubtful...the doubt should be resolved against such operation" (citations omitted)).

Sub. H.B. 319 contains no indication that the provisions of R.C. 3109.14 are to have retroactive effect. Thus, R.C. 3109.14 is prospective in operation and the fees to be charged and collected by the clerk of courts pursuant to R.C. 3109.14 are to be collected only in cases filed after December 26, 1984, the effective date of the statute.

You have also inquired as to whether the fees collected pursuant to Am. Sub. S.B. 219, 115th Gen. A. (1984) (eff. Jan. 8, 1985), are to be collected in cases filed prior to its effective date. Am. Sub. S.B. 219, inter alia, provides funding for legal aid societies in the State of Ohio. R.C. 1907.282 and R.C. 2303.201 were amended by Am. Sub. S.B. 219 to require, respectively, that a county court and a court of common pleas collect additional sums upon the filing of new civil actions in order to provide financial assistance to legal aid societies within the state. Am. Sub. S.B. 219 is subject to the restrictions of Ohio Const. art. II, §28 and R.C. 1.48 and is presumed to be prospective in operation unless expressly and clearly given retroactive effect. Am. Sub. S.B. 219 contains no indication that its provisions are to have retroactive effect. Thus, the amendments to R.C. 1907.282 and R.C. 2303.201 are prospective in operation. The fees charged and collected pursuant to Am. Sub. S.B. 219 are to be collected only in cases filed after January 8, 1985, the effective date of the legislation.

My answers to your first and second questions preclude the necessity of addressing your third question. Thus, I now proceed to your fourth question regarding whether the dismissal of the divorce or dissolution proceeding alters the duty of the clerk of courts to forward to the state the fee collected under R.C. 3109.14. You ask whether, in the event of such dismissal, see e.g., R.C. 3105.65, the fee is nevertheless forwarded to the State of Ohio. R.C. 3109.14 provides that:

a court of common pleas shall charge and collect a fee of ten dollars in addition to any other court costs or fees. The county clerk of courts may retain an amount of each additional fee that he collects, not to exceed three per cent of the amount of the additional fee, to be used for costs directly related to the collection of the fee and the forwarding of the fee to the treasurer of state.

The additional fees collected under this section during each month shall be forwarded not later than the fifth day of the immediately following month to the treasurer of state, who shall deposit the fees to the credit of the children's trust fund special account.

The statutory scheme of R.C. 3109.13-.18 provides that the fee collected upon the filing of a complaint for divorce or a petition for dissolution must be forwarded to the Treasurer of State. There is no other provision for the disposition of the fee. The statute makes no provision for a refund of the fee if the complaint or petition is dismissed. Therefore, once the fee has been charged, it must be forwarded to

the Treasurer of State, as provided by statute, irrespective of the subsequent dismissal of the action which generated the fee.

Your final question relates to the date upon which the fee is to be sent to the Treasurer of State. You ask whether the fee is to be transmitted on the date of the final order or on the date upon which the fee is collected. R.C. 3109.14 provides that the fees collected during each month are to be forwarded to the Treasurer of State not later than the fifth day of the immediately following month. R.C. 3109.14 makes no reference to the time when the final order is issued. I have already concluded that the fee charged under R.C. 3109.14 is to be collected upon the filing of a complaint of divorce or petition of dissolution, and that the dismissal of the action does not affect the transmission of the fee. Likewise, the conclusion of the matter which generated the fee is not a concern addressed in the statutory scheme of R.C. 3109.13-.18. Thus, the clerk of courts must forward the fee to the Treasurer of State not later than the fifth day of the month immediately following the month in which the fee is collected.

In conclusion, it is my opinion, and you are advised, that:

1. The fees collected by the appropriate clerks of court pursuant to Sub. H.B. 319, 115th Gen. A. (1984) (eff. Dec. 26, 1984) and Am. Sub. S.B. 219, 115th Gen. A. (1984) (eff. Jan. 8, 1985) are to be collected only in cases filed subsequent to the effective dates of those acts.
2. The fee collected pursuant to R.C. 3109.14 by the county clerk of courts "[u]pon the filing for a divorce decree. . .or a decree of dissolution" is to be collected upon the filing of the complaint for divorce or the petition for dissolution.
3. The fee collected by the county clerk of courts pursuant to R.C. 3109.14 must be forwarded to the Treasurer of State, irrespective of the subsequent dismissal of the action which generated the fee.
4. The fee collected by the county clerk of courts pursuant to R.C. 3109.14 must be forwarded to the Treasurer of State not later than the fifth day of the month immediately following the month in which the fee is collected.