OPINION NO. 98-016

Syllabus:

A county, an agency of the county, or another political subdivision that files a civil action or proceeding in municipal court may be required to pay filing fees pursuant to R.C. 1901.26.

To: W. Duncan Whitney, Delaware County Prosecuting Attorney, Delaware, Ohio
By: Betty D. Montgomery, Attorney General, June 15, 1998

We have received your letter requesting an opinion concerning the imposition of filing fees by a municipal court. Your specific question is whether municipal judges are authorized to "assess fees against a county government agency or political subdivision filing civil actions on behalf of county organizations."

Your letter states that the Municipal Court in the City of Delaware "has recently begun to charge fees to county governmental agencies and political subdivisions" when they file civil actions to collect back taxes. Your letter adds that, in the past, filing fees were assessed as court costs. Your representative informed us that your question relates generally to any filing fees that may be charged under R.C. 1901.26, and that it concerns civil actions filed by the county, by an agency of the county, or by another political subdivision.

In order to answer your question, we must look to R.C. 1901.26, which prescribes the manner in which a municipal court may fix and tax costs. It addresses both advance deposits and other filing fees, and also fees and costs that are taxed or paid at other times in the proceedings.

Your letter notes that R.C. 1901.26 was recently amended.[1] As currently in effect, R.C. 1901.26 states, in part:

> (A) Subject to division (C) of this section, costs in a municipal court shall be fixed and taxed as follows:
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> (1) *The municipal court shall require an advance deposit for the filing of any new civil action or proceeding when required by division (A)(9) of this section,* and in all other cases, by rule, shall establish a schedule of fees and costs to be taxed in any civil or criminal action or proceeding.

R.C. 1901.26 (footnote omitted; emphasis added).

The reference in R.C. 1901.26(A) to division (C) is to a provision requiring the clerk of the municipal court to charge fees and perform duties specified in R.C. 2969.21 to R.C. 2969.27. *See* Sub. H.B. 455, 121st Gen. A. (1996) (eff. Oct. 17. 1996); note 1, *supra*. Those sections deal with civil actions or appeals brought by inmates against governmental entities or employees, and they are not relevant to the question you have raised.

The reference in R.C. 1901.26(A)(1) to division (A)(9) is an apparent error, for there is currently no division (A)(9) in R.C. 1901.26(A)(1). The language previously appearing in division (A)(9) was redesignated as division (C) by Am. Sub. H.B. 438. *See* Am. Sub. H.B. 438, 121st Gen. A. (1996) (eff. Oct. 31, 1996, with amendments to R.C. 1901.26 eff. July 1, 1997); note 1, *supra*. That language requires the municipal court to collect specified amounts

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[1]R.C. 1901.26 was amended by Sub. H.B. 455, 121st Gen. A. (1996) (eff. Oct. 17, 1996), by Sub. H.B. 423, 121st Gen. A. (1996) (eff. Oct. 31, 1996), and by Am. Sub. H.B. 438, 121st Gen. A. (1996) (eff. Oct. 31, 1996, with amendments to R.C. 1901.26 eff. July 1, 1997). Amendments made by Sub. H.B. 455 were not included in Am. Sub. H.B. 438. The Legislative Service Commission determined that the amendments are not irreconcilable, so that they are required by R.C. 1.52 to be harmonized. The version currently appearing in the Official Ohio Revised Code has two divisions designated (C), one so designated in Am. Sub. H.B. 438 and one enacted in Sub. H.B. 455. R.C. 1901.26 (Anderson Supp. 1997).

of filing fees "in each new civil action or proceeding for the charitable public purpose of providing financial assistance to legal aid societies that operate within the state." R.C. 1901.26(C). These fees are "in addition to any other court costs imposed in the action or proceeding and shall be collected at the time of the filing of the action or proceeding." *Id.* The court may not waive these fees unless it waives the advanced payment of all filing fees in the action or proceeding. *Id.* It appears that the reference in R.C. 1901.26(A)(1) to division (A)(9) was intended to be to the language now appearing in division (C); even if it were not, that language would stand on its own to require the municipal court to collect the filing fees prescribed.

Another grant of authority for a municipal court to charge filing fees appears in R.C. 1901.26(A)(2). That provision states that "[t]he municipal court, by rule, may require an advance deposit for the filing of any civil action or proceeding." R.C. 1901.26(A)(2).

Further authority to impose filing fees is granted by R.C. 1901.26(B). That provision permits the municipal court to charge a fee, in addition to other court costs, on the filing of each criminal cause, civil action or proceeding, or judgment by confession, if additional funds are necessary to acquire and pay for special projects of the court. R.C. 1901.26(B). The statute lists some projects that may be funded by these fees. *Id.*; *see also* 1997 Op. Att'y Gen. No. 97-049.

Thus, several provisions of R.C. 1901.26 authorize the imposition of filing fees.[2] The statutory language contains certain exceptions for parties that are unable to make the required deposit. *See* R.C. 1901.26(A)(2). No statutory exception exists for counties, county agencies, or other political subdivisions. The plain language of the statute thus indicates that it applies to public entities that are plaintiffs in the same manner in which it applies to other plaintiffs.

The question whether a county may be required to pay filing fees was addressed by a prior Attorney General in 1983 Op. Att'y Gen. No. 83-075. That opinion concludes that the county or a county officeholder may be required, pursuant to a rule of court, to provide security for costs prior to filing a civil action or commencing legal proceedings, except when the judge orders otherwise or the defendant waives the security requirement. 1983 Op. Att'y Gen. No. 83-075 (syllabus, paragraph 1). The opinion goes on to conclude that counties or county officeholders may be liable for costs in civil actions in which they do not prevail, and that the obligation to furnish security or pay costs applies even in actions in which both plaintiff and defendant are county entities. *Id.* (syllabus, paragraphs 2 and 3).

We examined that opinion in detail in 1997 Op. Att'y Gen. No. 97-024 and concluded that its analysis continues to be valid and that a county children services board may be required to pay court costs taxed by a juvenile court pursuant to R.C. 2151.54. 1997 Op. Att'y Gen. No. 97-024 (syllabus, paragraph 3). 1997 Op. Att'y Gen. No. 97-024 considers both court costs collected through a final cost bill upon completion of the case and the payment of a security deposit at the time of filing. *Id.* at 2-138. It adopts the general rule that, absent express statutory exemption, counties and their agencies and officers are required to pay filing fees in accordance with relevant statutes and rules of court.

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[2]In addition, R.C. 1901.26(A)(3) permits the court to require an advance deposit when a jury trial is demanded in a civil action or proceeding. Your representative has informed us that this provision is not of particular concern at this time.

The conclusion that counties and other political subdivisions may be required to pay filing fees has been widely accepted. *See generally Hollon v. Hollon*, 117 Ohio App. 3d 344, 690 N.E.2d 893 (Athens County 1996) (rejecting argument that a child support enforcement agency has governmental immunity from the imposition of court costs). Various other Attorney General opinions support the conclusion that county entities may be required to pay filing fees. *See, e.g.*, 1988 Op. Att'y Gen. No. 88-094, at 2-458 ("since each court of common pleas may promulgate a rule requiring an advance deposit for the filing of civil actions or proceedings, and since no federal or state law of which I am aware prohibits a court of common pleas from requiring, through adoption of a local rule, the deposit of security for costs in actions brought by a county prosecuting attorney in a child support enforcement proceeding, whether the county prosecuting attorney's office must present such deposit upon the filing of a child support enforcement action depends upon the provisions of any local rule governing such deposits"); *see also* 1989 Op. Att'y Gen. No. 89-015; 1987 Op. Att'y Gen. No. 87-022.

While some of the authorities discussed above consider only courts of common pleas, *see, e.g.*, 1997 Op. Att'y Gen. No. 97-024, 1983 Op. Att'y Gen. No. 83-075 addresses the question whether a municipal court may require a county or county officeholder to pay a filing fee and answers in the affirmative. That opinion refers to the language of R.C. 1901.26 authorizing a municipal court, by rule, to require an advance deposit for the filing of any civil action or proceeding, and states:

> I am aware of no statute or established rule in Ohio which would exempt a county or county officeholder from the operation of court rules requiring the deposit of a sum of money as security for costs prior to the filing of a civil action.[2] However, the rules of practice for both the Summit County Court of Common Pleas, General Division, and the Akron Municipal Court require a plaintiff or proceeding party to furnish security for costs "unless otherwise ordered by the presiding judge." C.P. Summit, Gen. Div., R. 7.06; Akron Mun. Ct. R. 14(A). Further, the requirement of security imposed upon a plaintiff may always be waived by the defendant to the action. State ex rel. Houghton v. Pethtel, 138 Ohio St. 20, 32 N.E.2d 411 (1941) (construing former G.C. 11616).
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> I conclude, therefore,...that the county and/or a county officeholder may, pursuant to rule of court, be required by the clerk of courts, prior to filing a civil action, to provide security for costs, except as otherwise ordered pursuant to court rule by the presiding judge, unless defendants to such actions waive the security requirement.

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[2]Cf. R.C. 109.19, which exempts "the state or an officer thereof" from any security requirements in the prosecution or defense of actions. Counties do not share this exemption with the state for the reason that "county" is not synonymous with "state." See, e.g., R.C. 1703.01 (foreign corporations); R.C. 2743.01(A) (court of claims); R.C. 3115.01(B) (reciprocal enforcement of support). But see State ex rel. Meader v. Sullivan, 15 Ohio C.C. 477 (Hamilton County 1897) (where county prosecutor files motion in quo warranto on relation of the state, he is not required to furnish security for costs under statute stating "no undertaking or security is required on behalf of the state, or of any officer thereof in the prosecution or defense of any action, writ or proceeding").

1983 Op. Att'y Gen. No. 83-075, at 2-309 to 2-310.

The same conclusion must be reached in the instant case. Unless an exception applies to a county or other political subdivision, such a governmental entity may be required to pay filing fees. Our research has disclosed no exception that applies in the situation you have described. Therefore, a county, an agency of the county, or another political subdivision that files a civil action or proceeding in municipal court may be required to pay filing fees pursuant to R.C. 1901.26.

Your letter of request references *Niehaus v. State ex rel. Bd. of Educ.*, 111 Ohio St. 47, 144 N.E. 433 (1924), and 1985 Op. Att'y Gen. No. 85-098, which find that municipal corporations do not have power to require other political subdivisions to pay fees unless such power is granted by statute. It might be suggested that this principle operates to exempt counties and other political subdivisions from paying any filing fees that may be imposed pursuant to R.C. 1901.26. That argument, however, must be rejected.

The *Niehaus* case and 1985 Op. Att'y Gen. No. 85-098 base the limitations on a municipality's authority to charge fees upon the fact that home rule provisions of the Ohio Constitution grant municipalities powers of local self-government, but not the power to obstruct or hamper the activities of another political subdivision carried out under general provisions of state law. *See* Ohio Const. art. XVIII, §§ 3, 7. Even under its home rule powers, a municipal corporation cannot impose a fee that would thwart the general law of the state. *See Niehaus v. State ex rel. Bd. of Educ.*, 111 Ohio St. at 47, 144 N.E. at 433 (syllabus, paragraph 2); 1985 Op. Att'y Gen. No. 85-098 (syllabus, paragraph 3).

Powers of municipal court judges, however, are not subject to the home rule provisions of the Ohio Constitution. Instead, the powers of those judges are derived from Ohio Const. art. IV, §1, which vests the judicial power of the state in the courts, including courts that are "established by law," such as municipal courts. The General Assembly is thus given power to establish courts and define their authority. A municipal corporation has no authority to take any action to vary the powers of municipal court judges from those established by statute. *See* 1980 Op. Att'y Gen. No. 80-014 (syllabus, paragraph 1) ("[t]he creation and maintenance of the municipal courts is reserved to the General Assembly pursuant to Ohio Const art. IV, §1. The home rule doctrine found in Ohio Const. art. XVIII, §3 does not give a municipality the authority to legislate concerning municipal courts"); *see also* 1996 Op. Att'y Gen. No. 96-044.

As discussed above, express statutory language authorizes a municipal court, by rule, to "require an advance deposit for the filing of any civil action or proceeding." R.C. 1901.26(A)(2). The municipal court is also authorized to charge filing fees for special projects pursuant to R.C. 1901.26(B) and to charge filing fees for legal aid pursuant to R.C. 1901.26(C). No statutory exceptions are provided for counties or other political subdivisions. The language enacted by the General Assembly thus provides clear authority for a municipal court to impose filing fees upon a county or other political subdivision. A municipal corporation is not empowered to restrict that authority, and our research has disclosed no other basis for exempting counties or other political subdivisions from filing fee requirements imposed under R.C. 1901.26.

It should be noted, however, that in some instances a party may be reimbursed for filing fees that it has paid. The Ohio Rules of Civil Procedure state: "Except when express provision therefor is made either in a statute or in these rules, costs shall be allowed to the prevailing party unless the court otherwise directs." Ohio R. Civ. P. 54(D). Those rules were

enacted by the Ohio Supreme Court for application, in civil matters, to all courts in Ohio, including municipal courts. *See* Ohio Const. art. IV, §5; Ohio R. Civ. P. 1(A). Thus, filing fees that are included as costs may be charged against the losing party. R.C. 1901.26(A)(7) permits a municipal court "as it determines," to refund deposits and advance payments of fees and costs, "when they have been paid by the losing party." In appropriate circumstances, therefore, filing fees may be assessed against the losing party and refunded to the prevailing party. *See generally* 1983 Op. Att'y Gen. No. 83-075.

For the reasons discussed above, it is my opinion, and you are advised, that a county, an agency of the county, or another political subdivision that files a civil action or proceeding in municipal court may be required to pay filing fees pursuant to R.C. 1901.26.