

**OPINION NO. 77-088****Syllabus:**

In an unsuccessful criminal prosecution, brought in a municipal court for an alleged violation of state law, fees for witnesses and jurors, and other court costs, are to be paid by the county. (1974 Op. Att'y Gen. No. 74-077, approved and followed; 1972 Op. Att'y Gen. No. 72-063, modified).

**To:** Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio  
**By:** William J. Brown, Attorney General, December 9, 1977

I have before me your request for an opinion regarding payment of court costs in state prosecutions in municipal court. Your letter outlines the problem as follows:

The state legislature established the Kettering Municipal Court in Ohio Revised Code Section 1901.01. Section 1901.02 gave the court jurisdiction within Washington Township. The Montgomery County Sheriff's Office, providing police protection according to contract, filed actions in the court, based on state statutes, for alleged misdemeanors in the township. The actions were either "dismissed" or resulted in a judgment of "not guilty." The court incurred costs for filing fees, witness fees, subpoenas, bench warrants and summonses, court costs, prisoner costs, juror costs, mileage, and the sheriff. The Auditor of State's Report of Examination of Washington Township for April 1, 1973 to August 18, 1975, held that there was no statutory provision requiring the Township to pay such costs.

Therefore, you have raised the following question:

From whom shall a municipal court, established by state statute and given jurisdiction within a township by state statute, collect costs incurred on actions based on state statutes for alleged misdemeanors in the township and filed by the county sheriff providing police protection according to contract, which were either "dismissed" or resulted in a verdict of "not guilty?"

It should be noted at the outset that responsibility for the payment of jurors and witnesses, as opposed to the other fees about which you inquire, is specifically addressed by statute. R.C. 1901.25 and R.C. 1901.26, infra. Those matters will, therefore, be treated separately.

After a thorough inspection of the Ohio Revised Code, I am unable to find a statutory provision that would apportion any of the other costs about which you inquire. There are, however, several sections which, if construed together, indicate that these costs are most logically borne by the county. The most analogous of these sections is R.C. 1901.31 (F). It provides in part as follows:

The clerk of a municipal court shall receive and collect all costs, fees, fines, penalties, bail, and other moneys payable to the office . . ., and shall each month disburse the same to the proper persons or officers . . ., provided that fines received for violation of municipal ordinances shall be paid into the treasury of the municipal corporation . . ., and to the county treasury all fines collected for the violation of state laws, . . .

Although this section merely directs the clerk of the municipal court to disburse fines to the county in state cases and does not deal with the imposition of costs, it does indicate that in prosecutions for violations of state law the county is the subdivision most directly involved in the prosecution. R.C. 1901.31 (F), along with R.C. 1901.34 and R.C. 3375.50, was the subject of a recent opinion of this office which dealt with a problem analogous to the one you present. That opinion, 1975 Op. Att'y Gen. No. 75-045, concluded as follows:

Under R.C. 1901.34 and R.C. 3375.50, the costs collected by the clerk of a municipal court in a state criminal proceeding are to be paid into the county treasury.

If the county is the recipient of the various costs and fines received in a successful prosecution of an individual for the violation of a state law, it is

reasonable to conclude that the county must bear the necessary cost in the event that the defendant is either acquitted or dismissed.

This conclusion is, in my opinion, supported by related statutory provisions. R.C. 2335.12, which deals with the expense of executing writs, provides as follows:

In all state cases, any wholly salaried minor court officer, charged with the execution of a warrant to arrest or order of commitment, shall receive from the county treasury the actual necessary expense of executing such writs upon specifically itemized bills, verified by oath of such officer, and certified to by the proper magistrate, court, or clerk thereof. Such expense shall in a like manner, be paid from the municipal treasury when incurred in ordinance cases.

R.C. 1901.34 imposes an additional financial obligation upon the county for state prosecutions brought in municipal court. It reads, in pertinent part, as follows:

The city solicitor, city attorney, or director of law . . . shall prosecute all criminal cases brought before the municipal court . . . for violation of state statutes or other criminal offenses occurring within the municipal corporation . . . The city solicitor . . . shall prosecute all criminal cases brought before said court arising in the unincorporated areas within said territory, . . . He . . . shall receive for such services additional compensation to be paid from the treasury of the county as the board of county commissioners prescribes.

Although none of the quoted sections specifically answers your question, these provisions do indicate that the county must bear various costs in prosecuting state misdemeanors in the municipal court. Each of the foregoing provisions clearly indicates that although the state is nominally the "losing party" when the defendant is acquitted or dismissed, the real party is the county. It is the county which must compensate the city attorney for prosecuting state cases. R.C. 1901.34. It is the county which must pay the expenses for service of writs in state cases. R.C. 2335.12. It is the county which receives fines collected in state cases. R.C. 1901.31 (F). It is the county which receives the deposits for court costs from the clerk of the municipal court when they are made in prosecutions for violation of state law. 1975 Op. Att'y Gen. No. 75-045. Certainly, if the county receives the fines collected in successful state prosecutions, it would be anomalous to find that it has no responsibility for court costs in an unsuccessful prosecution. Therefore, in a criminal proceeding for violation of state law, brought in a municipal court, the county must pay the court costs if the defendant is either dismissed or acquitted.

This conclusion comports fully with the general rule concerning the imposition of court costs in municipal court. R.C. 1901.26 (G), which provides that the ultimate responsibility for such costs rests with the "losing party," provides in part as follows:

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

. . . .

(G) All deposits and advance payments of fees and costs including those for jurors and summoning jurors shall be refunded when the same have been paid by the losing party.

Finally, the conclusion that the county must bear the costs under the circumstances you describe is supported by the specific statutory provisions relating to the payment of jurors and witnesses. In 1974 Op. Att'y Gen. No. 74-077, I had occasion to consider the imposition of those costs and concluded as follows:

In 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.

The imposition of fees for jurors upon the county arises from R.C. 1901.25, which provides, in part, 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 the municipal ordinance shall be paid out of the treasury of the municipal corporation. (Emphasis added.)

Fees for witnesses are controlled by R.C. 1901.26 (D). That section incorporates R.C. 2335.08, which provides in pertinent part 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.)

Although both of the sections quoted above speak in terms of having the fees advanced and then repaid when collected, when the prosecution fails, no reimbursement can be made since there is no defendant against whom collection can be sought. Consequently, the financial obligation must be borne by the county.

One final point requires discussion. In 1972 Op. Att'y Gen. No. 72-063, I reached the following conclusion:

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

The issue in that opinion was limited to the imposition of costs for the court reporter, and such costs are specifically covered by R.C. 1901.32. The syllabus of that opinion is, therefore, unnecessarily broad. It has been modified once, See, Op. No. 74-077, supra, and it is hereby modified further.

Accordingly, it is my opinion, and you are so advised that:

In an unsuccessful criminal prosecution, brought in a municipal court for an alleged violation of state law, fees for witnesses and jurors, and other court costs, are to be paid by the county. (1974 Op. Att'y Gen. No. 74-077, approved and followed; 1972 Op. Att'y Gen. No. 72-063, modified).