

OPINION NO. 81-096**Syllabus:**

A mayor, acting as judge of a mayor's court pursuant to R.C. 1905.01:

1. Is required to accept checks as conditional payment of fines and costs for traffic offenses pursuant to Traffic Rule 13(D)(2), and is authorized, pursuant to R.C. 1905.01, R.C. 1905.30, or rule of court under R.C. 1905.28, to accept checks as conditional payment of fines or costs in other instances;
2. Is not liable for checks accepted by the mayor's court as conditional payment of fines, costs, or bail bonds when such checks are subsequently returned for insufficient funds, if such checks are accounted for as provided in R.C. 1905.21 (1924 Op. Att'y Gen. No. 2098, vol. I, p. 704, clarified); and
3. May enact a rule of court requiring that checks presented for payment be certified; however, such rule may not be applied to those cases processed by a traffic violations bureau under Traffic Rule 13(D)(2).

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, December 21, 1981

I have before me your request for my opinion regarding the authority of a judge in a mayor's court to accept checks in payment of fines and costs, and the potential liability such a judge may face for checks returned for insufficient funds. You specifically ask that 1924 Op. Att'y Gen. No. 2098, vol. I, p. 704¹ be clarified in answering:²

¹In 1924 Op. No. 2098, one of my predecessors opined that there is no authority in Ohio for a mayor to accept a check in payment of a fine, and that if a mayor did accept a check in payment of a fine he would be liable should such check be returned for insufficient funds.

²Although not specifically mentioned in questions (2), (3), and (4), it is my understanding that in each of these questions you refer, as in question (1), to a mayor acting in the capacity of a judge in a mayor's court, as is authorized by R.C. 1905.01.

- (1) Whether a mayor, acting as judge in mayor's court, is liable for checks that are returned for nonsufficient funds, when they were accepted for payment of traffic violations[;]
- (2) Whether a mayor is authorized to collect fines and costs by check, which are not processed through a traffic bureau[;]
- (3) Whether a mayor can enact a rule of court requiring that all checks presented be certified[; and]
- (4) Whether a mayor is liable for a forfeited bail bond, when posted with a nonsufficient fund check[.]

Since your first question concerns traffic violations, I turn to the Ohio Traffic Rules.³ Pursuant to Traffic Rule 13(A), a mayor's court must establish a traffic violations bureau, which is responsible for accepting "payment of fine and costs for offenses within its authority,"⁴ and appoint its clerk or, if there is no clerk, another appropriate person as violations clerk, who shall be responsible for receiving and accounting for such fine and costs. Traffic Rule 13(D), which sets out two alternative methods by which a defendant may plead guilty of, and pay the fine and costs for, a traffic offense processed by a traffic violations bureau, provides:

A defendant charged with an offense which can be processed by a traffic violations bureau may, within seven days after the date of issuance of the ticket:

- (1) Appear in person at the traffic violations bureau, sign a plea of guilty and waiver of trial provision of the ticket and pay the total amount of the fine and costs, or
- (2) Sign the guilty plea and waiver of trial provision of the ticket, and mail the ticket and a check or money order for the total amount of the fine and costs to the traffic violations bureau.

Remittance by mail of the fine and costs to the traffic violations bureau constitutes a guilty plea and waiver of trial whether or not the guilty plea and waiver of trial provision of the ticket are signed by the defendant. (Emphasis added.)

By this provision, a defendant either may appear in person to plead guilty and "pay the total amount of the fine and costs," or may plead guilty without appearing in person by so signing the ticket and mailing "the ticket and a check or money order for the total amount of the fine and costs to the traffic violations bureau." Therefore, pursuant to Traffic Rule 13(A) and 13(D)(2), a mayor's court, through its traffic violations bureau, must accept checks which accompany tickets returned by mail for the amount of the fine and costs of traffic offenses.

As to whether a mayor, as judge of the mayor's court, will be liable for checks accepted by the traffic violations bureau, which are subsequently returned for insufficient funds, I first turn to 1924 Op. No. 2098 at 706, in which one of my predecessors stated:

A mayor, taking a check in payment of a fine, endorsing and depositing same, is in the same position as any endorser of such a negotiable instrument. The fact that he holds the office of mayor does not make him official custodian of moneys coming into his

³ Pursuant to R.C. 2935.17 and 2937.46, the Ohio Supreme Court promulgated the Ohio Traffic Rules, and made such rules applicable to all courts of the state in traffic cases. See Traffic Rule 1.

⁴ See Traffic Rule 13(B), which incorporates all traffic offenses, except those enumerated, within a traffic bureau's authority.

hands. The law holds him personally responsible for moneys collected by him, and the fact that he keeps an account in the bank in his name as mayor does not relieve him of the responsibility.

In the case you mention, the mayor did not turn the original check in to the county or city nor keep it in his own possession, but cashed it for the party paying the fine, and having paid the amount of such fine to the city, county or state, by his check, he cannot recover same nor hold the amount out of other fines collected by him.

Thus, it was concluded that a mayor was liable for checks he accepted and cashed which were subsequently returned for insufficient funds. Based upon the facts that were presented, I agree with my predecessor's conclusion; however, I believe that such a result is mandated only in a similar fact situation.

By cashing the check presented for payment by the party paying the fine, and then remitting such payment to the proper treasury by his own check, the mayor referenced in 1924 Op. No. 2098 had determined that the check presented by the party paying the fine was, in effect, money constructively received. However, as I opined in 1980 Op. Att'y Gen. No. 80-104 at 2-427, "a public officer may accept a personal check only as conditional payment, and may not bind the government if the check is not paid. Manck v. Fratz, 7 Ohio Dec. Reprint 704 (Superior Ct. of Cincinnati 1897)." Thus, the mayor discussed in 1924 Op. No. 2098 was liable not because he accepted a check in payment of the fine, but because he determined the check to be absolute payment when, in fact, it was not.

This analysis equally applies to a mayor acting as a judge in a mayor's court. Although a judge in the mayor's court must accept a check from a traffic offender through the traffic violations bureau as provided in Traffic Rule 13(D)(2), such check amounts to conditional payment only, and must be accounted for under R.C. 1905.21, which provides in pertinent part:

The mayor of a municipal corporation shall keep a docket. After January 1, 1954, he shall not retain or receive for his own use any of the fines, forfeitures, fees, or costs he collects, but shall be paid such fixed annual salary as the legislative authority of the municipal corporation provides under sections 731.08 and 731.13 of the Revised Code. . . . He shall account for and dispose of all such fees, forfeitures, fines, and costs as provided in section 733.40 of the Revised Code. (Emphasis added.)

By this provision, a mayor must keep an account of fines and costs that he collects in his capacity as judge in the mayor's court. Such account must be kept separate from the fixed annual salary that the mayor receives, and disposed of in accordance with R.C. 733.40. Thus, a mayor may not cash those checks he receives and place the proceeds into his personal account as was done in 1924 Op. No. 2098; rather, he must deposit the checks in such separate account as provided in R.C. 1905.21. This procedure will enable the mayor to determine whether such conditional payment has become absolute. As I opined in Op. No. 80-104 at 2-427:

If the [drawer's] bank makes payment upon demand, the check becomes absolute payment. Summit Mall, Inc. v. Guran, 7 Ohio App. 2d 53, 218 N.E.2d 637 (Summit County 1966). Of course, it would follow that, if the bank refuses to make payment upon demand, then no payment has been made by the payor. Therefore, the payor's obligation to make payment still exists, and the public official cannot be liable therefor. Manck v. Fratz. (Emphasis added.)

In other words, if the offender's check is returned for insufficient funds, his obligation still exists, because payment was not made. In such a situation, the obligation owed to a mayor's court may be recovered pursuant to R.C. 1905.32, which provides that fines, penalties, and forfeitures may "be recovered by action

before any judge of a county court, or other court of competent jurisdiction, in the name of the proper municipal corporation, and for its use." See generally Voll v. Steele, 141 Ohio St. 293, 47 N.E.2d 991 (1943) (mayor, as judge of a mayor's court, is authorized to have a defendant who violates the terms of his discharge by stopping payment of his check given in settlement of fine and costs assessed against him apprehended). Consequently, it is my opinion that a mayor, acting as judge in a mayor's court, is not liable for checks that are returned for insufficient funds, if accounted for as provided in R.C. 1905.21.

In your second question you ask whether a mayor has authority to collect, by check, fines and costs for offenses which are not processed through a traffic bureau.⁵ A mayor's court, as a creature of statute, possesses only those powers conferred by law. Truman v. Walton, 59 Ohio St. 517, 525, 53 N.E. 57, 58 (1899). Pursuant to R.C. 1905.01, a mayor, as judge of a mayor's court:

has jurisdiction to hear and determine any prosecution for the violation of an ordinance of the municipal corporation, and has jurisdiction in all criminal causes involving moving traffic violations occurring on state highways located within the boundaries of the municipal corporation, subject to the limitations of sections 2937.08 and 2938.04 of the Revised Code. (Emphasis added.)

By this provision, the mayor is granted the jurisdiction to "determine" the prosecution of an ordinance violation. Such power to "determine" the prosecution would seem to include the power to "determine" that the payment of fines and costs be by check. Furthermore, pursuant to R.C. 1905.30, a mayor's court may confine the person sentenced "until the fine is paid or secured to be paid." (Emphasis added.) Thus, to avoid imprisoning the person sentenced, a mayor's court is authorized to accept security for payment; it seems that a mayor's court could reasonably determine that a check, accepted as conditional payment, constitutes such security. In addition, pursuant to R.C. 1905.28, a mayor presiding at trial may "establish rules for the examination and trial of all cases brought before him, in the same manner as judges of county courts." By M.C. Sup. R. 18,⁶ judges of county courts may establish local rules which seek to promote the use of any procedure "which would tend to facilitate the earlier disposition of cases."⁷ It would seem to be within the discretion of such a court to determine that allowing offenders to pay fines and costs by check, instead of cash, would tend "to facilitate the earlier disposition of cases." Thus, it is my opinion that a mayor, as judge in a mayor's court, pursuant to R.C. 1905.01, R.C. 1905.30, or rule of court under R.C. 1905.28, is authorized to collect fines and costs by check. See generally Voll v. Steele.

By this same analysis, I believe, in response to your third question, that a mayor may enact a rule of court requiring that checks presented for payment be certified. However, since Traffic Rule 13(D)(2) specifically allows an offender to pay fine and costs by "check or money order" and does not specify that the check must be certified, such a rule may not be applied to those cases processed by a traffic violations bureau pursuant to Traffic Rule 13(D)(2).

In your fourth question you ask whether a mayor is liable for a forfeited bail bond, when posted with a check which is subsequently returned for insufficient

⁵R.C. 1905.01 grants a mayor, as judge in a mayor's court, jurisdiction to hear and determine municipal ordinance violations and traffic violations. Since traffic violations are processed by a traffic violations bureau within the mayor's court, I assume that in question two you are referring to a mayor's collection of fines and costs for municipal ordinance violations.

⁶Rules of Superintendence for Municipal Courts and County Courts.

⁷M.C. Sup. R. 1 makes R. 18 applicable to county courts.

funds.⁸ Your concern in this question, the liability a mayor may face for checks returned for insufficient funds, is the same as in your first question; therefore, I direct you to my analysis and conclusion in question one.

In conclusion, it is my opinion, and you are advised, that a mayor, acting as judge of a mayor's court pursuant to R.C. 1905.01:

1. Is required to accept checks as conditional payment of fines and costs for traffic offenses pursuant to Traffic Rule 13(D)(2), and is authorized, pursuant to R.C. 1905.01, R.C. 1905.30, or rule of court under R.C. 1905.28, to accept checks as conditional payment of fines or costs in other instances;
2. Is not liable for checks accepted by the mayor's court as conditional payment of fines, costs, or bail bonds when such checks are subsequently returned for insufficient funds, if such checks are accounted for as provided in R.C. 1905.21 (1924 Op. Att'y Gen. No. 2098, p. 704, clarified); and
3. May enact a rule of court requiring that checks presented for payment be certified; however, such rule may not be applied to those cases processed by a traffic violations bureau under Traffic Rule 13(D)(2).

⁸It is implicit in your question that you are assuming that the mayor has authority to accept a check as a form of bail bond. Such authority is apparently granted by R.C. 2937.22(C), which provides that bail may take the form of a "written undertaking by one or more persons to forfeit the sum of money set by the court or magistrate, if the accused is in default for appearance, which shall be known as a recognizance." See generally 1970 Op. Att'y Gen. No. 70-036 (courts may accept credit card sales drafts as a form of bail under R.C. 2937.22(C)); Crim. R. 46.