OPINION NO. 87-022

Syllabus:

No state or federal statutes or regulations prohibit county courts of common pleas from requiring, through local rule, a court cost deposit in actions brought pursuant to title IV-D of the Social Security Act (42 U.S.C. Sections 651-669) on behalf of non-recipients of public assistance to enforce or modify child support obligations. If a court cost deposit is required in any non-recipient title IV-D action filed through a county's title IV-D agency, that county's department of human services must advance the deposit.

To: Stephen E. Keister, Van Wert County Prosecuting Attorney, Van Wert, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, May 5, 1987

I have before me your opinion request in which you ask whether a so-called non-recipient client must pay a deposit for court costs when filing a title IV-D child support enforcement or modification action. Title IV-D of the Social Security Act (42 U.S.C. §§ 651-669) provides for public assistance to families for the enforcement of child support payment obligations. Although title IV of the Social Security Act operated originally only to provide public financial assistance for needy dependent children,[1] it now provides that families not currently receiving public financial assistance are eligible for child support enforcement services under title IV-D if they apply for such service. 42 U.S.C. § 654(6). You note in your letter that clients who use IV-D child support enforcement services are classified as either recipients or non-recipients of public financial assistance (e.g., aid to families with dependent children (ADC or AFDC)). You indicate that your office provides the IV-D services for recipient clients, while a private attorney is under contract with the county department of human services to serve the non-recipients.

42 U.S.C. § 654 enumerates the types of assistance that each state must provide to non-recipients, specifically noting:

> A State plan for child and spousal support must--
> ....
> (6) provide that (A) the child support collection or paternity determination services established under the plan shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the State, including support collection services for the spouse (or former spouse) with whom the absent parent's child is living (but only if a support obligation has been established

---

1 See title IV of the original Social Security Act (49 Stat. 620 (1935)). The Act was passed "[f]or the purpose of enabling each State to furnish financial assistance ... to needy dependent children ...." Id. at 627. "The term 'dependent child' means a child under the age of sixteen who [among other things] has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent ...." Id. at 629.

> with respect to such spouse, and only if the support obligation established with respect to the child is being enforced under the plan) .... [2]

"[N]ot otherwise eligible for such services" refers to families who are not eligible for public financial assistance. See also 42 U.S.C. § 651 (providing that "assistance in obtaining support will be available under this part to all children (whether or not eligible for aid ...) for whom such assistance is requested").

In Ohio, the bureau of child support has been established to fulfill the obligations imposed upon states by title IV-D of the Social Security Act. R.C. 5101.31(A) provides: "The bureau of child support is hereby created in the department of human services. The bureau shall establish and administer a program of child support enforcement, which program shall meet the requirements of Title IV-D of the 'Social Security Act,' 88 Stat. 2351 (1975), 42 U.S.C. 651, as amended, and any rules promulgated under Title IV-D." R.C. 2301.35 provides that, on the local level:

> (A)(1) Each court of common pleas shall establish, by rule, a bureau of support. The bureau of support shall be responsible for the collection of payments due under support orders. In any court of common pleas in which a division of domestic relations is established, the bureau of support shall be established and administered by the judge or administrative judge of that division.
>
> ....
>
> (B)(1) The establishment of a bureau of support shall be entered upon the journal of the court and the clerk of the court of common pleas shall thereupon certify a copy of the order to each elective officer and board of the county. The bureau shall consist of such personnel as determined by the court. The court shall make appointments to the bureau, fix the salaries of appointees, and supervise their work.

Although local bureaus of support are not subject to the control of the state bureau of child support or the state department of human services, R.C. 2301.351 requires that local bureaus of support report certain statistics as necessary to either the state or county director of human services.

As noted, your question concerns whether non-recipient families may be assessed court costs when utilizing title IV-D services. R.C. 2323.31 provides:

> The court of common pleas by rule may require an advance deposit for the filing of any civil action or proceeding. On motion of the defendant, and if satisfied that such deposit is insufficient, the court may require it to be increased from time to time, so

---

[2] Recently enacted amendments to several sections of the Revised Code dealing with child support enforcement have increased the bureau of support's ability to control collection and distribution of all child support. Hence, the need for this type of action may markedly decrease in the future. See, e.g., R.C. 2151.23(G), 2301.351(B), 2301.36(A), and 2301.37.

> as to secure all costs that may accrue in the cause, or may require personal security to be given; but if a plaintiff makes an affidavit of inability either to prepay or give security for costs, the clerk of the court shall receive and file the petition. Such affidavit shall be filed with the petition, and treated as are similar papers in such cases. (Emphasis added.)

Accordingly, Local Rule 4 of the Van Wert County Court of Common Pleas provides in pertinent part:

> In civil cases, other than divorce and dissolution, a deposit of $60.00 shall be posted with the Clerk as security for costs at the time of filing the complaint. A like deposit shall be made with cross-complaints, counter-complaints and third party actions.
>
> ....
>
> After a case is concluded, upon motion to re-open, a deposit of $25.00 shall be required, except for motions brought by the Bureau of Support which shall require no deposit. If such motion includes a request for a change of custody of minor children, there shall be taxed as costs and added to such deposit, the sum of $35.00 for any custody investigation ordered by the Court.
>
> The Clerk shall not file any such pleadings unless the same is accompanied by the deposit required by this rule or an affidavit of poverty. (Emphasis added).

Thus, under local rule 4, non-recipients need not be charged court costs if their actions are "brought by the Bureau of Support." As I understand the facts,[3] the private attorney under contract to the Van Wert County Department of Human Services files child support enforcement actions and contempt actions through the local bureau of support, which then files those actions with the clerk of courts. However, the private attorney files modification of support actions directly with the clerk of courts. As a result, non-recipients have not been charged court costs for enforcement or contempt actions, but have been charged court costs for modification of support actions.

No statute specifically identifies non-recipients as exempt from court cost charges under R.C. 2323.31 and relevant local rules. R.C. 5101.31(A) allows the department of human services to

> charge an application fee of up to twenty-five dollars, as determined by rule adopted by the department pursuant to Chapter 119. of the Revised Code, for furnishing services under Title IV-D of the 'Social Security Act' ... to persons not receiving aid

---

[3] At the suggestion of a member of your staff, a member of my staff spoke with the Director and the Child Support Supervisor of the Van Wert County Department of Human Services. She was then referred to the local attorney who is under contract to the department to represent non-recipient IV-D clients, and to the Ohio Department of Human Services.

> to dependent children. The department shall adopt rules pursuant to Chapter 119. of the Revised Code authorizing counties, at their option, to waive the payment of the fee. The application fee, unless waived pursuant to rules adopted by the department pursuant to this section, shall be paid by those persons.

In addition to authorizing counties to waive the application fee, the administrative rules of the Director of the Ohio Department of Human Services limit the fee to no more than one dollar: "At the time of application, a fee of one dollar shall be charged to each non-ADC recipient .... The [County Department of Human Services] CDHS may, at its option, absorb the payment of the one-dollar non-ADC recipient application fee for child support services instead of charging the non-ADC recipient."[4] 8 Ohio Admin. Code 5101:1-29-12. The administrative code also enumerates the services that are to be provided to non-ADC recipients, and emphasizes that non-recipients are not to be subject to any additional charges. Ohio Admin. Code 5101:1-29-13(A), 1986-87 Ohio Monthly Record 749,[5] provides that "[a]ll child support services provided to ADC recipients must be made available to non-ADC recipients upon written application." The provision goes on: "[t]he non-ADC recipient shall be provided all [IV-D] services at no cost beyond the application fee, if this is not absorbed by the CDHS." Id. at 5101:1-29-13(D). (Emphasis added). The provision lists the IV-D services as follows: "[t]he full service non-ADC application shall include: location, paternity establishment, establishment of a court order, enforcement of a court order, and modification of a court order." Id. Four of these five services--establishing paternity, establishing the court order, enforcing the court order, and modifying the court order--require the filing of a court action. Further, local bureaus of support are established and administered by county courts of common pleas pursuant to R.C. 2301.35. Both of these facts indicate that the Director should have been aware of the possibility of court costs when he drafted rule 5101:1-29-13 and that he meant to relieve non-recipients of the burden of paying court costs. I find nothing that indicates that the Director meant for non-recipients to pay court costs.

The Ohio Department of Human Services cannot change the language or interpretation of local rule 4; it does not have the authority to regulate court costs in any county court of

---

[4] I note further that R.C. 2301.35(D)(1) provides that the obligor shall pay an application fee to the bureau of support:

> The bureau of support shall adopt a fee, to be paid by the obligor, for the administration of support orders. The fee shall not exceed two per cent of the amount to be collected under a support order, or one dollar per month, whichever is greater ....(emphasis added).

[5] Although this rule was promulgated as an emergency measure, the Ohio Department of Human Services has indicated that the rule will be permanently adopted as it presently exists.

common pleas. It does, however, have the authority to assign duties and obligations to county departments of human services. Therefore, I find that rule 5101:1-29-13(D) requires county departments of human services to absorb court cost charges for non-recipients using IV-D services when those court costs are not waived.[6]

In addition to the requirements of state statutes and regulations, the legislative history of federal child support enforcement statutes militates against charging court costs to non-recipients. The federal Social Security Act, which governs IV-D legal services, specifically provides for legal services for non-ADC recipients. See 42 U.S.C. § 654(6)(A), which provides that "the child support collection or paternity determination services established under the plan shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the State .... " The reason for allowing non-ADC recipients to receive state help in enforcing child support obligations has been explained in at least two United States Senate reports preceding title IV-D amendments to the Social Security Act. In 1974, the Senate Finance Committee explained its reasons for assisting non-ADC recipients:

> [T]he problem of nonsupport is broader than the AFDC rolls and ... many families might be able to avoid the necessity of applying for welfare in the first place if they had adequate assistance in obtaining the support due from absent parents. Accordingly, the Committee bill would require that the procedures adopted for locating absent parents, establishing paternity, and collecting child support be made available to families even if they are not on the welfare rolls.

---

[6] County departments of human services may be able to receive reimbursement for court cost deposits from the federal government. 45 CFR § 304.11 provides:

> Subject to the provisions and limitations of Title IV-D of the Act and Chapter III, Federal financial participation will be available in expenditures made under the State plan (including the administration thereof) in accordance with applicable State laws, rules, regulations, and standards governing expenditures by State and local child support enforcement agencies.

In addition, 45 CFR § 304.21 governs federal financial participation in the costs of cooperative agreements with courts and law enforcement officials. 45 CFR § 304.21(b)(1) provides that federal financial participation is not available in "[s]ervice of process and court filing fees unless the court or law enforcement agency would normally be required to pay the cost of such fees .... " While the attorney general has no authority to interpret federal regulations, it appears that this regulation could allow reimbursement of county departments of human services for payment of court costs for non-recipients upon proof that the non-recipients would "normally be charged"; i.e., that no state or local rule or custom exempts them from court cost charges. Payment and reimbursement could also depend on the specifics of a particular cooperative agreement.

S. Rep. No. 1356, 93rd Cong., 2d Sess. 55, reprinted in 1974 U.S. Code Cong. & Ad. News 8133, 8158. In 1983, a court upholding the rights of non-ADC recipients to receive "all the necessary and appropriate child support enforcement services" noted that "[t]he congressional goal of keeping single mothers and their children off the welfare rolls by providing them the full panoply of IV-D services appears to have met with considerable success." Carter v. Morrow, 562 F. Supp. 311, 312, 314 (W.D.N.C. 1983)(citing supporting statistics).

When Congress considered amendments to and refunding of title IV-D five years later, the Senate Finance Committee reiterated the importance of providing child support enforcement services for non-ADC recipients:

> The purpose of the requirement [of help for non-AFDC recipients] is to assure that abandoned families with children have access to child support services before they are forced to apply for welfare .... [A]ccess to these services often means the difference between a family's reliance on welfare support and being supported by a legally responsible parent. Most of the families being served are marginally eligible for AFDC, and without child support services are likely to end up on the welfare rolls. (Emphasis added.)

S. Rep. No. 336, 96th Congr., 1st Sess. 78, reprinted in 1980 U.S. Code Cong. & Ad. News 1448, 1527 (cited with approval in South Carolina Department of Social Services v. Deglman, 341 S.E.2d 638, 639-40, 288 S.C. 149, 152 (S.C. App. 1986)).[7] (Emphasis added).

Thus, the expressed policy behind the provisions of the Act that allow non-ADC recipients to benefit from child support enforcement services is to prevent them from going on welfare. Requiring non-recipients to pay court costs does not operate to prevent them from going on welfare; indeed, it can encourage them to go on welfare. According to local rule 4 of the Van Wert County Court of Common Pleas, the court costs for a modification of child support action would be twenty-five dollars. Some families might not be able to afford to avail themselves of IV-D services until they are on welfare and could receive the services without paying court costs. Such a result would be directly contrary to title IV-D's legislative history.

The administrative rules of the Ohio Department of Human Services plainly state that non-recipients should be provided the appropriate IV-D services "at no cost beyond the application fee." Ohio Admin. Code 5101:1-29-13(D). I find

---

[7] In Deglman, the court found that a custodial father who was financially secure and not in apparent or immediate need of support from the mother was not entitled to use South Carolina's title IV-D services; however, in that suit the father's representative sought to establish a child support obligation where none had existed before. In addition, that holding was at least in part based on the failure to prove an assignment of child support rights from the father to the South Carolina Department of Social Services, which had brought the suit. 341 S.E.2d at 640, 288 S.C. at 153.

that court costs are a "cost beyond the application fee" and that the Department did not intend to frustrate the expressed purpose of the Social Security Act by requiring non-recipient families to pay court costs when filing title IV-D actions.[8] See R.C. 1.49(B) and (C)(when construing an ambiguous statute, courts may consider the circumstances under which the statute was enacted, as well as the legislative history).

Accordingly, it is my opinion and you are hereby advised that no state or federal statutes or regulations prohibit county courts of common pleas from requiring, through local rule, a court cost deposit in actions brought pursuant to title IV-D of the Social Security Act (42 U.S.C. Sections 651-669) on behalf of non-recipients of public assistance to enforce or modify child support obligations. If a court cost deposit is required in any non-recipient title IV-D action filed through a county's title IV-D agency, that county's department of human services must advance the deposit.

---

[8] In your letter, you indicate concern that "a married or unmarried woman with $50,000.00 in annual income ... can sign up as a non-recipient and have the IV-D legal representative file with the Court a motion to modify a child support order, or to enforce a support order." I presume that a non-recipient with an income of $50,000.00 who signs up for IV-D services is the exception rather than the rule. In any case, I find no authority in Ohio that would allow any IV-D legal representative to make distinctions among non-recipient clients on the basis of their annual incomes. But see South Carolina Department of Social Services v. Deglman, supra footnote 7.