

MUNICIPAL COURT—SCHEDULE OF FEES AND COSTS—
MAY NOT TAX AS PART OF COSTS EXPENSE OF COURT
REPORTER WHERE SERVICES WERE NOT ACTUALLY PER-
FORMED—SECTION 1901.26 RC.

SYLLABUS:

A municipal court, in establishing a schedule of fees and costs pursuant to the provisions of Section 1901.26, Revised Code, may not tax, as a part of the costs in any proceeding, the expense of a court reporter where the services of such reporter were not actually rendered.

Columbus, Ohio, April 20, 1955

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have before me your request for my opinion which reads as follows:

"It appears that on January 10, 1955, the judges of the Toledo Municipal Court issued an order that effective February 1, 1955, costs in all traffic cases should be increased from a minimum of \$6.20 to a minimum of \$6.90, to cover the cost of a court reporter in each case.

"Paragraph 'A' of Section 1901.26 R. C. provides that the judges of the Municipal Court in any city may establish a schedule of fees and costs not to exceed those of the Common Pleas Court in similar actions.

"Also, we find provisions in Sections 2391.20, 2301.21 and 2301.22, R.C., where under the Common Pleas Court may include \$4.00 as costs where shorthand reporters are requested by either party to the case, *and services are rendered*.

"The question which has arisen in this connection is as follows:

"Can the judges of the Toledo Municipal Court legally increase the minimum costs to be collected in traffic cases from \$6.20 to \$6.90 for each such case tried in the Municipal Court, even where no request for the services of a court stenographer has been made, and where no such services have been rendered by any shorthand reporter or court stenographer?

"It appears that the reason for the authorized increase in the costs to be assessed in traffic cases is to provide money to pay the salaries of four court reporters, whom the judges of the court have contemplated appointing. It is estimated that this increase in costs assessed would bring approximately \$25,000.00 into the treasury of the City of Toledo, each year."

Authority has been granted to the municipal courts of this state to establish, by rule of court, a schedule of fees and costs to be taxed in any civil or criminal proceeding. This authority is conferred by Section 1901.26, Revised Code, which provides in pertinent part as follows:

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

"(A) The municipal court, by rule, may establish a schedule of fees and costs to be taxed in any action or proceeding, either civil or criminal, which shall not exceed the fees and costs provided by law for a similar action or proceeding in the court of common pleas."

The term "costs" has been defined as that amount which is authorized by statute to be assessed in favor of a party litigant for the expenses which he has incurred in the course of litigation. It includes the sum total of various disbursements made by one party, which are authorized by statute to be recovered from the adverse party.

The term "fees" has been defined as the amount by which a party may be made to respond in favor of the court or its officers in return for having received the services of such officers.

These terms have been used interchangeably, and when so used include all items of expense which a litigant must bear for the privilege of maintaining or defending a legal action. Since unknown at common law, it is essential that statutory authority exist for the assessment and collection of any item as a part of the costs. *Farrier v. Cairns*, 5 Ohio Reports, 45.

The Supreme Court of Ohio adopted the following definition of costs in the case of *State ex rel. v. Guilbert*, 77 Ohio St., 333, 338:

"Costs, in the sense the word is generally used in this state, may be defined as being the statutory fees to which officers, witnesses, jurors and others are entitled *for their services in an action or prosecution* and which the statutes authorize to be taxed and included in the judgment or sentence. The word does not have a fixed legal signification. As originally used it meant an allow-

ance to a party for expenses incurred in prosecuting or defending a suit. Costs did not necessarily cover all of the expenses and they are distinguishable from fees and disbursements. They are allowed only by authority of statute, * * *. (Emphasis added.)

I have been unable to find any authority whatsoever to support the position that a court may tax, as a part of the costs, an item which represents neither an expense incurred by a party litigant, nor an assessment imposed for services rendered by an officer of the court. To the contrary, it would appear to be inherent in the above quoted definition of the term that each item included as a part of the costs represents either a disbursement by the opposing party or the rendition of a service by an officer of the court.

Prior to the passage of Section 1901.26, Revised Code, a provision of the new Municipal Court Act, former Section 3005, General Code, limited the fees and costs which could be charged by a municipal court in a criminal case. This section provided as follows:

"In each municipality where a municipal court is provided by law, the following fees, and no more, shall be taxed as a part of the costs and be included in the judgment in all criminal proceedings.

"FOR THE CLERK: The same fees provided for justices of the peace under section 1746, General Code.

"FOR THE BAILIFF: The same fees provided for constables under section 3347 General Code.

"FOR WITNESSES: The same fees provided under section 3014 General Code, and to be paid and accounted for in the manner provided therein.

"FOR INTERPRETER. The same fees provided in section 3014-1, General Code, and to be paid and accounted for in the manner provided therein.

"JURY FEES: The same as provided in section 12375 General Code, and to be accounted for in the manner provided for therein."

In adopting the present Revised Code, this section was omitted, ostensibly on the ground that the provisions thereof were considered by the legislature to be obsolete or redundant. It is interesting to note, however, that an examination of those sections "incorporated by reference" within Section 3005, discloses that the services of those officers of the court enumerated within this section were required to be rendered before such items could be taxed as a part of the costs.

Former Section 1746, General Code, for example, began as follows:

"For their services in criminal proceedings, *when rendered*, justices of the peace shall tax as costs * * *." (Emphasis added.)

Former Section 3347, General Code, provided in part:

"*For services actually rendered and expenses incurred*, regularly elected and qualified constables shall be entitled to receive the following fees and expenses, to be taxed as costs * * *." (Emphasis added.)

These sections then proceeded to enumerate the specific items and amounts taxable.

It is clear that the legislature intended to confer additional authority upon the municipal courts of this state by allowing such courts to adopt their own schedule of fees and costs, as provided by Section 1901.26(A), Revised Code. It does not follow, however, that our municipal courts have been given an unlimited discretion in determining what may be included as a part of the costs in any proceeding.

It is apparent from a reading of Section 1901.26(A), Revised Code, that where a court of common pleas is authorized to tax a particular item as a part of the costs, and is limited in the amount which may be so charged, a municipal court is likewise limited to this amount where it has included an identical item within its schedule of fees and costs.

In Opinion No. 2442, Opinions of the Attorney General for 1953, at page 125, I held that where no provision is made for the assessment by a court of common pleas of a particular item as a part of the costs, a municipal court is not limited in the amount which it may charge for that item when included within its schedule.

The question with which you are now concerned, however, involves a more basic interpretation of the statute, viz., whether an item included as a part of the costs in any proceeding, is properly characterized as such, where it does not represent an expense incurred in particular litigation. I am inclined to hold that it is not.

In addition to the definition of "costs" adopted by the Supreme Court of Ohio in the case of State ex rel. v. Guilbert, supra, the following definitions are worthy of quotation:

"The word 'costs' has a legal signification. It includes only those *expenditures incidental to the prosecution of an action or other legal proceeding* * * *." 11 Ohio Jurisprudence, 10.
(Emphasis added.)

"Costs are allowances to a party for the expenses incurred in prosecuting or defending a suit * * * fees are compensation to public officers *for services rendered individuals, in the progress of the cause.*" 20 Corpus Juris Secundum, 259. (Emphasis added.)

It is apparent, therefore, that encompassed within the fixed legal significance of the term "costs" is the requirement that the item taxed represent an expense or service related to and incurred in the particular litigation in which these costs are sought to be assessed; and that, accordingly, an item which does not represent such an expense or service is not properly considered as a part of the costs and may not lawfully be taxed as such.

In view of the last paragraph of your inquiry, I would like to note in passing that Section 1901.33, Revised Code, authorizes the appointment by the judge or judges of a municipal court of one or more official court reporters. The compensation of such reporters is fixed by the legislative authority of the municipality and is payable out of the city treasury.

This section is entirely distinct from the authority of a municipal court to tax as an item of costs the expense of a reporter. Although the municipal court may provide for the employment of a court reporter, it may not tax the cost of such reporter against a party who has not received the services thereof.

In specific answer to your inquiry, therefore, it is my opinion that a municipal court, in establishing a schedule of fees and costs pursuant to the provisions of Section 1901.26, Revised Code, may not tax, as a part of the costs in any proceeding, the expense of a court reporter where the services of such reporter were not actually rendered.

Respectfully,
C. WILLIAM O'NEILL
Attorney General