

OPINION NO. 93-009**Syllabus:**

1. Except when a mayor's court determines that an individual is indigent and waives the payment of all court costs imposed upon the indigent individual, a traffic violations bureau established by a mayor's court pursuant to Traf. R. 13, in which an individual appears in person to pay the total amount of the fine and costs or mails the ticket and a check or money order for the total amount of the fine and costs to the traffic violations bureau, is required to impose the mandatory court costs of R.C. 2743.70 and R.C. 2949.091.
2. A "blanket waiver of indigency" that determines, without regard to the individual's financial condition, that an individual is indigent because that individual is a member of a specified group or class of individuals is impermissible.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Lee Fisher, Attorney General, April 19, 1993

You have requested an opinion concerning the assessment of state mandated court costs. Your specific questions are as follows:

1. Are state costs under Sections 2743.70 and 2949.091, Revised Code, to be collected on cases heard in a Mayor's Court Waiver Violations Bureau?
2. Are blanket waivers of indigency, such as the ones ordered in the Mayor's Court and the Juvenile Court, permissible?

Assessment of State Mandated Court Costs

R.C. 2743.70 and R.C. 2949.091 set forth provisions related to the imposition of state mandated court costs against nonindigent individuals. Pursuant to R.C. 2743.70(A),

(1) [t]he court, in which any person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, shall impose the following sum as costs in the case in addition to any other court costs that the court is required by law to impose upon the offender:

- (a) Twenty dollars, if the offense is a felony;
- (b) Six dollars, if the offense is a misdemeanor.

The court shall not waive the payment of the twenty or six dollars court costs, unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender....

(2) The juvenile court in which a child is found to be a delinquent child or a juvenile traffic offender for an act which, if committed by an adult, would be an offense other than a traffic offense that is not a moving violation, shall impose the following sum as costs in the case in addition to any other court costs that the court is required or permitted by law to impose upon the delinquent child or juvenile traffic offender:

- (a) Twenty dollars, if the act, if committed by an adult, would be a felony;
- (b) Six dollars, if the act, if committed by an adult, would be a misdemeanor.

The twenty or six dollars court costs shall be collected in all cases unless the court determines the juvenile is indigent and waives the payment of all court costs, or enters an order on its journal stating that it has determined that the juvenile is indigent, that no other court costs are to be taxed in the case and that the payment of the twenty or six dollars court costs is waived.

Similarly, R.C. 2949.091(A) provides:

(1) The court, in which any person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, shall impose the sum of eleven dollars as costs in the case in addition to any other court costs that the court is required by law to impose upon the offender.... The court shall not waive the payment of the additional eleven dollars court costs, unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender.

(2) The juvenile court, in which a child is found to be a delinquent child or a juvenile traffic offender for an act which, if committed by an adult, would be an offense other than a traffic offense that is not a moving violation, shall impose the sum of eleven dollars as costs in the case in addition to any other court costs that the court is required or permitted by law to impose upon the delinquent child or juvenile traffic offender.... The eleven dollars court costs shall be collected in all cases unless the court determines the juvenile is indigent and waives the payment of all court costs, or enters an order on its journal stating that it has determined that the juvenile is indigent, that no other court costs are to be taxed in the case, and that the payment of the eleven dollars court costs is waived.

See also R.C. 2949.092 (a court shall not waive the payment of the mandatory court costs of R.C. 2743.70 and R.C. 2949.091 unless the court determines that the offender is indigent and the court waives the payment of all court costs imposed upon the offender). Thus, except when a mayor's court or a juvenile court determines that an individual or juvenile is indigent and waives the payment of all court costs imposed upon the indigent individual or juvenile, a mayor's court, in which any person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, or a juvenile court, in which a child is found to be a delinquent child or a juvenile traffic offender for an act which, if committed by an adult, would be an offense other than a traffic offense that is not a moving violation, is required, pursuant to R.C. 2743.70 and R.C. 2949.091, to impose a specified sum of money as costs in the case in addition to any other costs that the court is required or permitted by law to impose in the case.¹

¹ It should be noted that information provided in conjunction with your request argues that insofar as the language of R.C. 2743.70 and R.C. 2949.091 refers to the costs imposed therein "as 'additional costs' in excess of any other court costs in the case," a court that does not impose court costs is not required to impose the mandatory court costs of R.C. 2743.70 and R.C. 2949.091. As indicated in the text above, both R.C. 2743.70 and R.C. 2949.091 require a court to impose mandatory court costs which are "in addition to any other court costs

A Traffic Violations Bureau Established by a Mayor's Court Must Impose State Mandated Court Costs

Your first question asks whether a mayor's court waiver violations bureau is required to impose the state mandated court costs of R.C. 2743.70 and R.C. 2949.091. A mayor's court is required, pursuant to Traf. R. 13(A), to establish a traffic violations bureau. The function of the traffic violations bureau is to "accept appearance, waiver of trial, plea of guilty and payment of fine and costs for offenses within its authority." Traf. R. 13(A). Pursuant to division (D) of Traf. R. 13,

[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.

Thus, a traffic violations bureau is required to receive an individual's plea of guilty and payment of the total amount of the fine and costs.

In order for a traffic violations bureau to perform its function, a mayor's court must establish and publish a schedule of fines and costs for all offenses and appoint its clerk or, if there is no clerk, any appropriate person of the municipality in which the court sits to the position of violations clerk for the traffic violations bureau. Traf. R. 13. All fines and costs are "paid to, received by and accounted for by the violations clerk." Traf. R. 13(A). Both the violations clerk and the traffic violations bureau are under the direction and control of the mayor's court that establishes the bureau. *Id.* A traffic violations bureau thus is a part of the mayor's court that establishes the bureau.

that the court is required by law to impose upon the offender." The plain language of these statutes does not expressly characterize the mandatory court costs imposed therein as "additional costs"; rather, the statutes specifically state that the mandatory court costs are in addition to the court costs that a court is required by law to impose.

Moreover, neither statute makes the imposition of the mandatory costs set forth therein contingent upon the court imposing court costs in a case. Instead, the statutes specifically state that, except when a court determines that an individual or juvenile is indigent and waives the payment of all court costs imposed upon the individual or juvenile, a court must impose the mandatory court costs of R.C. 2743.70 and R.C. 2949.091. *See also* R.C. 2949.092. A reading of R.C. 2743.70 and R.C. 2949.091 in their entirety, thus, reveals that a court, which does not impose court costs in a case, is required to impose the mandatory court costs of R.C. 2743.70 and R.C. 2949.091. *See generally State v. Dickerson*, 45 Ohio St. 3d 206, 209, 543 N.E.2d 1250, 1254 (1989) (it is a well-settled rule of statutory interpretation that a statute is to be considered in its entirety), *reh'g denied*, 46 Ohio St. 3d 706, 545 N.E.2d 1285 (1989), *cert. denied*, 494 U.S. 1090 (1990); *Humphrys v. Winous Co.*, 165 Ohio St. 45, 133 N.E.2d 780 (1956) (a statute must be read and construed as a whole).

It is clear that an individual may plead guilty to an offense in a mayor's court by way of appearing in person at the traffic violations bureau and paying the total amount of the fine and costs or by remitting by mail the ticket and a check or money order for the total amount of the fine and costs to the traffic violations bureau. As stated above, except when a mayor's court determines that an individual is indigent and waives the payment of all court costs imposed upon the indigent individual, a mayor's court, in which any individual pleads guilty to any offense other than a traffic offense that is not a moving violation, is required, pursuant to R.C. 2743.70 and R.C. 2949.091, to impose a specified sum of money as costs in the case in addition to any other costs that the court is required or permitted by law to impose in the case. Because a traffic violations bureau is part of the mayor's court and the bureau accepts guilty pleas on behalf of the mayor's court, the bureau is required to impose the costs of R.C. 2743.70 and R.C. 2949.091 against any individual who appears in person to pay the total amount of the fine and costs or who mails the ticket and a check or money order for the total amount of the fine and costs to the traffic violations bureau. Accordingly, except when a mayor's court determines that an individual is indigent and waives the payment of all court costs imposed upon the indigent individual, a traffic violations bureau established by a mayor's court pursuant to Traf. R. 13, in which an individual appears in person to pay the total amount of the fine and costs or mails the ticket and a check or money order for the total amount of the fine and costs to the traffic violations bureau, is required to impose the mandatory court costs of R.C. 2743.70 and R.C. 2949.091.

Blanket Waivers of Indigency Are Impermissible

Your second question asks whether "blanket waivers of indigency" are permissible. Information provided indicates that "blanket waivers of indigency" are court orders that declare that the members of a specified group or class of individuals are indigent. For example, a "blanket waiver of indigency" may provide that juveniles are, as a general matter, without funds or resources to pay court costs and are, therefore, indigent, or that all individuals who plead guilty in a traffic violations bureau are indigent.

The language of R.C. 2743.70 and R.C. 2949.091 provides that, unless a court determines that an individual or juvenile is indigent and waives the payment of all court costs imposed upon the individual or juvenile, the court, in which an individual is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation or in which a child is found to be a delinquent child or a juvenile traffic offender for an act which, if committed by an adult, would be an offense other than a traffic offense that is not a moving violation, "shall impose" the additional court costs of R.C. 2743.70 and R.C. 2949.091. See R.C. 2949.092. The use of the word "shall" is construed to make the statutory provision in which it is contained mandatory, unless a contrary intent is clearly and unequivocally expressed by the statute's language. *State ex rel. Niles v. Bernard*, 53 Ohio St. 2d 31, 34 n.2, 372 N.E.2d 339, 341 n.2 (1978). An examination of R.C. 2743.70 and R.C. 2949.091 does not disclose a legislative intention that the imposition of the court costs of R.C. 2743.70 and R.C. 2949.091 is optional or permissive. To the contrary, the inclusion in R.C. 2743.70 and R.C. 2949.091 of a specific exclusion for when a court determines that an individual is indigent and waives the payment of all court costs imposed upon the individual, clearly reveals that the imposition of the court costs of R.C. 2743.70 and R.C. 2949.091 is mandatory. Therefore, the General Assembly requires a court, in which an individual is convicted of or pleads guilty to any offense that is not a moving violation or in which a child is found to be a delinquent child or a juvenile traffic offender for an act which, if committed by an adult, would be an offense other than a traffic offense that is not a moving violation, to impose the court costs of R.C. 2743.70 and R.C. 2949.091.

Courts May Establish Reasonable Methods to Determine Indigency

However, as indicated above, the court costs of R.C. 2743.70 and R.C. 2949.091 may be waived when a court determines that an individual is indigent and waives the payment of all court costs imposed upon the individual. Neither R.C. 2743.70 nor R.C. 2949.091 specifically directs the manner in which a court is to determine whether an individual is indigent. Where a statute authorizes performance of a particular act, but does not specify how the act is to be performed, the implication is that it is to be carried out in a reasonable manner. *Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878). Accordingly, a mayor's court or a juvenile court may determine a reasonable method in which to determine whether an individual is indigent. See generally *State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 19, 122 N.E. 39, 40 (1918) ("[e]very officer of this state or any subdivision thereof not only has the authority but is required to exercise an intelligent discretion in the performance of his official duty").

The reasonableness of the method used by a mayor's court or a juvenile court to determine whether an individual is indigent is, as a general matter, a question of fact that can be resolved only on a case by case basis. As stated in 1990 Op. Att'y Gen. No. 90-088, which addressed the determination of indigency under R.C. 2925.03(L), "there are no set criteria for determining whether an individual is indigent. Rather, the preferred approach is to determine indigency on a case by case basis so as to accord attention to any and all factors tending to indicate an individual's financial condition." Op. No. 90-088 at 2-378. Insofar as indigence must be considered and measured in each case by reference to an individual's financial condition, Op. No. 90-088, any method that determines, without regard to the individual's financial condition, that an individual is indigent because that individual is a member of a specified group or class of individuals is unreasonable.

Moreover, it is a well-settled rule of statutory interpretation that "exceptions to a general law are not favored and must be strictly construed." *The Pioneer Linen Supply Co. v. Evatt*, 146 Ohio St. 248, 251, 65 N.E.2d 711, 712 (1946). As indicated above, the General Assembly requires a court, in which an individual is convicted of or pleads guilty to any offense that is not a moving violation or in which a child is found to be a delinquent child or a juvenile traffic offender for an act which, if committed by an adult, would be an offense other than a traffic offense that is not a moving violation, to impose the court costs of R.C. 2743.70 and R.C. 2949.091. It is readily apparent that a "blanket waiver of indigency" that determines, without regard to the individual's financial condition, that an individual is indigent because that individual is a member of a specified group or class of individuals may result in the extension of the exception to individuals who are not indigent. Obviously, such an extension of the exception does not comport with the intention of the General Assembly. In light of the above, it must be concluded that a "blanket waiver of indigency" that determines, without regard to the individual's financial condition, that an individual is indigent because that individual is a member of a specified group or class of individuals is impermissible. See generally *State v. Powell*, 78 Ohio App. 3d 784, 605 N.E.2d 1337 (Van Wert County 1992) (a sentencing court must make an affirmative determination for the purposes of R.C. 2925.03, which requires the imposition of mandatory fines in drug trafficking cases, that an individual is indigent and unable to pay the fine).

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. Except when a mayor's court determines that an individual is indigent and waives the payment of all court costs imposed upon the indigent

individual, a traffic violations bureau established by a mayor's court pursuant to Traf. R. 13, in which an individual appears in person to pay the total amount of the fine and costs or mails the ticket and a check or money order for the total amount of the fine and costs to the traffic violations bureau, is required to impose the mandatory court costs of R.C. 2743.70 and R.C. 2949.091.

2. A "blanket waiver of indigency" that determines, without regard to the individual's financial condition, that an individual is indigent because that individual is a member of a specified group or class of individuals is impermissible.