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PERSON COMMITTED TO COUNTY JAIL FOR MISDEMEANOR FOR FAILURE TO PAY COURT COSTS AND FINE AND PAYS SAID COSTS AND FINES TO BE RELEASED,—SUCH PAYMENT MADE TO APPROPRIATE CLERK OF COURT BEFORE RELEASE—COUNTY SHERIFF WITHOUT AUTHORITY TO RELEASE SUCH PERSON WITHOUT AUTHORIZATION FROM THE CLERK—§2947.20, R.C.

## SYLLABUS:

Where a person is convicted of a misdemeanor in a municipal or county court, is committed to the county jail pursuant to Section 2947.20, Revised Code, for failure to pay the fine and costs, and wishes to pay the amount of the unpaid fine and costs in order to be released, such payment must be paid to the appropriate clerk of court before the prisoner may be released; and the county sheriff is without authority to collect the amount and release the prisoner without an appropriate authorization from the clerk.

Columbus, Ohio, July 19, 1961

Hon. John S. Ballard, Prosecuting Attorney  
Summit County, Akron, Ohio

Dear Sir:

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

“We understand that this situation has arisen in several Counties, and we have been requested to obtain your opinion concerning the legality and propriety of administration of the following procedure:

“Prisoners are occasionally committed to the County Jail under writ by the various municipal and county courts, and after commitment, offer to pay the costs and part of the fine not already served by them in the Jail. We understand that a deputy sheriff computes the amount, accepts the money required by his computation, and then releases the prisoner and remits the money to the municipal court from whence the commitment was issued.

“The question is whether or not the Sheriff has any legal authority or whether he should require such settlements to be made in the municipal court and hold a prisoner until proper release is presented to him from that court. We also enclose additional memorandum outlining a typical case and references of authority.”

Section 2947.20, Revised Code, provides:

“Where a fine may be imposed in whole or in part, in punishment of a misdemeanor, including the violation of an ordinance of a municipal corporation and the judge or magistrate has authority to order that the defendant stand committed to the jail of the county or municipal corporation until the fine and costs are paid, the court may order that such person stand committed to such jail or workhouse until such fine and costs are paid or secured to be paid, or he is otherwise legally discharged. Persons so imprisoned shall receive credit upon such fine and costs, at the rate of three dollars per day.”

Section 1901.31 (F), Revised Code, provides:

“The clerk of a municipal court shall receive and collect all costs, fees, fines, penalties, bail, and other moneys payable to the office or to any officer of the court and issue receipts therefor, and shall each month disburse the same to the proper persons or officers and take receipts therefor, provided that fines received

for violation of municipal ordinances shall be paid into the treasury of the municipal corporation whose ordinance was violated and to the county treasury all fines collected for the violation of state laws, subject to Sections 3375.50 and 3375.53 of the Revised Code. Moneys deposited as security for costs shall be retained pending the litigation. He shall keep a separate account of all receipts and disbursements in civil and criminal cases, which shall be a permanent public record of the office, as required by the bureau of inspection and supervision of public offices, and on the expiration of his term such records shall be delivered to his successor. He shall have other powers and duties as are prescribed by rule or order of the court.”

Section 1907.101 (C), Revised Code, provides :

“The clerk of a county court shall receive and collect all costs, fees, fines, penalties, bail, and other moneys payable to the office or to any officer of the court and issue receipts therefor, and shall each month disburse the same to the proper persons or officers and take receipts therefor, provided that fines received for violation of municipal ordinances shall be paid into the treasury of the municipal corporation whose ordinance was violated and to the county treasury all fines collected for the violation of state laws, subject to sections 3375.50 and 3375.53 of the Revised Code. Moneys deposited as security for costs shall be retained pending the litigation. He shall keep a separate account of all receipts and disbursements in civil and criminal cases, which shall be a permanent public record of the office, as required by the bureau of inspection and supervision of public offices, and on the expiration of his term such records shall be delivered to his successor. He shall have other powers and duties as are prescribed by rule or order of the court.”

A consideration of Sections 1901.31 (F) and 1907.101 (C), Revised Code, clearly indicate that the clerk of the municipal court and the clerk of the county court are the only persons authorized to collect fines and costs in criminal cases in their respective courts. It is true that Section 2949.09, Revised Code, authorizes the judge or magistrate to render judgment for fines and costs, that Section 2949.10, Revised Code, provides that the sheriff may execute such writ by taking the defendant into custody, and that Section 2949.11, Revised Code, further indicates that the sheriff may levy execution on the property of the defendant and collect such fines and costs and pay them to the county treasurer. I am of the opinion, however, that these sections do not pertain to the voluntary payment of fines by a defendant who has been committed to the county jail pursuant to Section

2947.20, Revised Code, but apply to instances where defendants refuse to pay fines and costs.

I am also aware that Section 2949.15, Revised Code, authorizes the sheriff to levy on property for fines and costs and to collect said fines and costs. Such section deals, however, with felony cases in courts of common pleas and is not pertinent in the instant question.

Also, while Section 311.16, Revised Code, requires the sheriff to report the collection of fines and costs in criminal prosecutions to the board of county commissioners, it seems obvious that this provision refers to fines and costs collected pursuant to Section 2949.11, Revised Code, and 2949.15, Revised Code, since there appears to be no other authority for the sheriff to collect fines and costs imposed by the courts.

Therefore, where a prisoner has been committed to the county jail for failure to pay a fine and costs, and such prisoner wishes to pay said fine and costs, the payment should be made to the appropriate clerk of court so that the necessary release may be presented to the sheriff. As it is the duty of the clerk to collect such fines and costs, he alone can state whether such has been paid.

Accordingly, it is my opinion and you are advised that where a person is convicted of a misdemeanor in a municipal or county court, is committed to the county jail pursuant to Section 2947.20, Revised Code, for failure to pay the fine and costs, and wishes to pay the amount of the unpaid fine and costs in order to be released, such payment must be paid to the appropriate clerk of court before the prisoner may be released; and the county sheriff is without authority to collect the amount and release the prisoner without an appropriate authorization from the clerk.

Respectfully,

MARK McELROY

Attorney General