S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
P.O. BOX 20207
NASHVILLE, TENNESSEE 37202

February 6, 2002

Opinion No. 02-017

Collection of Litigation Taxes in Misdemeanor Speeding Cases Under Tenn. Code Ann. § 55-8-152

QUESTION

Does the language of Tenn. Code Ann. § 55-8-152(f)(2) preclude the collection of litigation taxes when a defendant who appears in court is either found guilty of, or pleads guilty to, violating section 55-8-152, or has the case dismissed?

OPINION

No, the language of Tenn. Code Ann. § 55-8-152(f)(2) does not preclude the collection of litigation taxes from a defendant who is adjudged guilty of violating that statute.

ANALYSIS

Your request addresses the effect of Tenn. Code Ann. § 55-8-152(f)(2) on the collection of litigation taxes from defendants who have been convicted of certain speeding offenses under that statute. Section 55-8-152(f)(2) sets forth penalties for certain speeding violations committed on highways in Tennessee. Among its other provisions, section 55-8-152(f)(2) prohibits the imposition or assessment of costs against persons convicted of the defined speeding violations. *See* Tenn. Code Ann. § 55-8-152(f)(2) (Supp. 2001) (providing that "nor shall any costs be imposed or assessed against such person"). The statute permits the imposition of costs against the defendant only if the defendant fails "to appear or answer the traffic citation as required by law." *Id*.

The general provisions governing the collection of litigation taxes are codified at Tenn. Code Ann. §§ 67-4-601 to -606 (1998 & Supp. 2001). Pursuant to these provisions, the court clerk in a criminal action is required to collect a litigation tax from the defendant only "[u]pon a finding of guilt, plea of guilty, or submission to fine." Tenn. Code Ann. § 67-4-603(a)(2) (1998). Thus, in the absence of "a finding of guilt, plea of guilty, or submission to fine," the court clerk is not authorized to collect a litigation tax from the defendant. *Id*.; *accord* Op. Tenn. Att'y Gen. 00-188 (Dec. 14, 2000); Op. Tenn. Att'y Gen. 84-179 (May 30, 1984). The statutes expressly provide that the litigation tax imposed thereby "shall not be

deemed to be costs." Tenn. Code Ann. § 67-4-603(c) (1998); *accord* Op. Tenn. Att'y Gen. 00-188 (Dec. 14, 2000); Op. Tenn. Att'y Gen. 90-75 (Aug. 3, 1990); Op. Tenn. Att'y Gen. 81-504 (Sept. 8, 1981).

Because Tenn. Code Ann. § 55-8-152(f)(2) refers only to "costs", the statute's language has no effect on the collection of litigation taxes under Tenn. Code Ann. § 67-4-603(a)(2). Although Tenn. Code Ann. § 55-8-152(f)(2) prohibits the imposition or assessment of costs against persons convicted thereunder, the statute does not prohibit the collection of a litigation tax from such persons. "Costs" do not include the litigation tax imposed by Tenn. Code Ann. §§ 67-4-601 to -606 (1998 & Supp. 2001). Thus, a defendant convicted under Tenn. Code Ann. § 55-8-152 still must pay the litigation tax.

On the other hand, if the case against the defendant is dismissed, the defendant is not required to pay the litigation tax. The defendant must pay the litigation tax only if the charge results in "a finding of guilt, plea of guilty, or submission to fine." Tenn. Code Ann. § 67-4-603(a)(2) (1998). In the absence of one of these grounds, section 67-4-603(a)(2) does not authorize the collection of a litigation tax from the defendant.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

MARY ELLEN KNACK
Assistant Attorney General

Requested by:

The Honorable Larry E. Potter
Shelby County Environmental Court
201 Poplar Avenue, Suite 56
Memphis, Tennessee 38103