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Opinion No. 02-081

Costs for Indigent Defense under Tenn. Code Ann. § 40-14-210

QUESTIONS

1. Under Tenn. Code Ann. § 40-14-210, may a county legislative body impose a cost for indigent defense purposes in an amount greater or less than $12.50 in every misdemeanor and felony prosecution?

2. Once the county legislative body has approved the act, does the duty to collect the cost apply to clerks of all courts exercising misdemeanor and felony jurisdiction, including municipal courts within the county?

OPINIONS

1. No, the statute authorizes a county where the act has been approved to collect $12.50. The county may not modify the amount.

2. Yes, under the statute, the clerks of all courts must collect the costs in any misdemeanor or felony action instituted in the court.

ANALYSIS

1. Authority to Impose Costs under Tenn. Code Ann. § 40-14-210

This opinion interprets Tenn. Code Ann. § 40-14-210. The first question is whether, under the statute, a county that approves it may collect a cost of more or less than $12.50 in every misdemeanor and felony prosecution. Subsection (a) of that statute provides:

> (1) In *every misdemeanor and felony prosecution instituted* in counties having a population in excess of four hundred fifty thousand (450,000) according to the 1980 federal census or any subsequent federal census, there shall be collected a twelve dollar and fifty cent ($12.50) cost for the purpose of defraying the costs of legal representation and support services

> provided indigent defendants in criminal proceedings.
>
> (2) This section shall take effect in counties with a population of not more than seven hundred fifty thousand (750,000) and not less than four hundred fifty thousand (450,000) according to the 1980 federal census or any subsequent federal census upon approval by two-thirds (2/3) vote of the metropolitan council of Nashville-Davidson County.
>
> (3) This section shall take effect in any county with approval by two-thirds (2/3) vote of the county legislative body.

(Emphasis added). Tenn. Code Ann. § 40-14-210(a). Under subdivision (a)(3), any county that does not fall within the population brackets in subdivision (1) and (2) may adopt the act upon approval by a two/thirds vote of the county legislative body. Op. Tenn. Atty. Gen. 96-100 (July 31, 1996). The adopting county may not modify the statute, but must adopt it as written. Op. Tenn. Atty. Gen. 96-115 (September 5, 1996). If the county approves the statute, therefore, it may not modify the statute to collect more or less than the $12.50 fee, but must collect that fee in every misdemeanor and felony prosecution.

2. Duty to Collect the Fee

Once the county legislative body has approved imposition of the cost, the duty to collect the cost applies to the clerks of all courts exercising misdemeanor and felony jurisdiction. The question is whether this duty would apply to municipal courts within the county. The statute provides:

> (b) It is the duty of the clerk of *every court having jurisdiction of state misdemeanors and felonies* to include in every misdemeanor and felony cost bill the twelve dollar and fifty cent ($12.50) charge which shall be remitted to the county government.

(Emphasis added.) Effective July 1, 2002, the statute has been amended to read:

> . . . which shall be remitted to the county government, except in counties that are part of a multiple county judicial district as defined in § 16-2-506, in which case this charge shall be remitted to the office of the executive director of the district public defenders conference for the purpose of providing supplemental funding for the office of the district public defender within such judicial district. It is the legislative intent of this act that these funds shall not revert to the state general fund but shall instead be carried forward for the purpose for which they were originally intended.

Tenn. Code Ann. § 40-14-210(b), as amended by 2002 Tenn. Pub.Acts Ch. 691. It could be argued that

this provision only refers to courts that exercise both misdemeanor *and* felony jurisdiction. Under this interpretation, courts that exercise only misdemeanor jurisdiction would be excluded. Municipal courts that exercise jurisidiction over criminal offenses are usually accorded concurrent jurisdiction with general sessions courts over criminal offenses committed within the city limits. General sessions courts do have jurisdiction over persons charged with felony offenses for purposes of conducting a preliminary examination and/or binding them over to the grand jury. Rule 5, Tenn. R. Crim. P. *See also Lewis v. Metropolitan General Sessions Court*, 949 S.W.2d 696, 699-702 (Tenn. Crim. App. 1996), *rehearing denied* (1996), *p.t.a. denied* (1997) (citing with approval *Dunbar v. State*, 4 Tenn. Crim. 310, 470 S.W.2d 846 (1971), which held that the general sessions court had no authority to hear felony charges except upon preliminary examination to discharge the defendant or bind him over to circuit or criminal court).

In any case, we think Tenn. Code Ann. § 40-24-210(b) was intended to apply to all courts within the county where any misdemeanor or felony action may be instituted. This conclusion is based on the language in Tenn. Code Ann. § 40-24-210(a)(1), which states that the cost must be collected "in *every* misdemeanor and felony prosecution instituted" in the county where the statute applies. Under rules of statutory construction, the words "and" and "or" may be used interchangeably when necessary to carry out the legislative intent. *City of Knoxville v. Gervins*, 169 Tenn. 532, 89 S.W.2d 348 (1963), *cited in Stewart v. State*, 33 S.W.3d 785, 792 (Tenn. 2000).

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