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Opinion No. 02-095

Apportionment of DUI Fines to Reimburse Incarceration Costs

QUESTIONS

1. If a city law enforcement officer arrests a person for DUI and takes them to the county jail for incarceration, is it mandatory for the city to return a portion of the fine imposed on the defendant pursuant to Tenn. Code Ann. §55-10-403(a)(2) to the sheriff to reimburse the county for the costs of incarcerating the offender?

2. If a portion of the fine is to be returned to the county, how is that portion determined?

OPINIONS

1. Yes, a portion of the fine imposed shall be returned to the sheriff for reimbursement of the costs of incarcerating the offender, unless the actual cost of incarcerating the offender is covered by the assessment and collection of a jailer's fee.

2. The reimbursement is determined by resolution of the county's legislative body consistent with the provisions of Tenn. Code Ann. §§8-26-105 and 106.

ANALYSIS

1. Tenn. Code Ann. §55-10-403(a)(2) states that "[a] portion of any fine imposed upon a person for a violation of this section, up to the maximum fine actually imposed, shall be returned to the sheriff of a county jail or to the chief administrative officer of a city jail for the purpose of reimbursing such sheriff or officer for the cost of incarcerating such person for each night such person is actually in custody for a violation of this section." Therefore, by its plain language, the statute requires reimbursement to the sheriff of the county jail for the cost of incarcerating the DUI offender.

However, if the sheriff recovers the full cost of incarceration through a jailer's fee, the county may not seek additional reimbursement through the DUI fine. *See Brown v. Knox County,* 39 S.W.3d 585 (Tenn. Ct. App. 2001); *Knox County v. City of Knoxville,* No. 759, 1988 WL 116456 (Tenn. Ct. App. Nov. 2, 1988) (copy of opinion attached).

2. Tenn. Code Ann. §55-10-403(a)(2) requires reimbursement to the sheriff "in the same amount as is provided by §8-26-105, and shall not in any event be less than the actual cost of maintaining such person and shall be reimbursed in the manner provided by §8-26-106." Tenn. Code Ann. §8-26-105(a) provides for the county legislative or governing body to pass a resolution fixing the amount of the jailers' fees for misdemeanat prisoners. Therefore, that portion of the fine necessary to cover the fixed fee should be reimbursed to the sheriff.

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