

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
P.O. BOX 20207
NASHVILLE, TENNESSEE 37202-0207

August 22, 2003

Opinion No. 03-106

Jailers' Fees for Misdemeanants

QUESTIONS

1. Is there a prohibition on the assessment of jailers' fees against indigent misdemeanants?
2. Is the failure to pay jailers' fees grounds for revocation of probation?
3. Must jailers' fees assessed be reflective of the actual costs incurred?

OPINIONS

1. A defendant convicted of a misdemeanor offense may be assessed with the costs associated with the prosecution including jailers' fees, regardless of financial status.
2. A criminal defendant may not have his probation revoked through a violation warrant for failing to pay costs assessed in a criminal action.
3. Jailers' fees may be imposed on a per diem basis but should only cover those actual expenses outlined in Tenn. Code Ann. §§40-25-104 and 133.

ANALYSIS

A defendant convicted of a misdemeanor is responsible for paying the costs associated with the prosecution. Tenn. Code Ann. § 40-25-123. The costs of a criminal case include all costs incident to the arrest and safekeeping of the defendant including the costs of the jailer. Tenn. Code Ann. §§ 40-25-104 and 133. The Tennessee Supreme Court has held that “[t]here is no statutory or decisional authority to support the proposition that a trial court must waive the court costs upon a finding of indigency.” *State v. Black*, 897 S.W.2d 680, 683 (Tenn. 1995). Such a requirement would categorically prohibit the subsequent recovery of those costs. *Id.*

A criminal defendant may not have his probation revoked through a violation warrant for

failing to pay costs assessed in a criminal action. Op. Tenn. Atty. Gen. 00-162 (October 18, 2000). Tenn. Code Ann. §40-24-105(a) provides that costs “shall not be deemed part of the penalty, and no person shall be imprisoned...in default of payment of costs....” Instead, costs may be collected in the same manner as a judgment in a civil action. *Id.*; see *Bearden v. Georgia*, 461 U.S. 660, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983) (revocation of probation and imprisonment for failure to pay restitution and fine violates due process absent findings of willful refusal).

The county legislative body is authorized to pass a resolution fixing the amount of jailers’ fees which may be applied to misdemeanor prisoners. Tenn. Code Ann. §8-26-105(a). Jailers’ fees established pursuant to Tenn. Code Ann. §8-26-105 may be imposed on a per diem basis. Op. Tenn. Atty. Gen. 84-307 (November 13, 1984). However, jailers’ fees are not a penalty. They should cover only those reasonable actual costs of confinement. See, e.g., Tenn. Code Ann. §41-8-106(c)(1).

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

KIMBERLY J. DEAN
Deputy Attorney General

Requested by:

Dan T. Bryant
District Public Defender
State of Tennessee, 31st Judicial District
118 N. College Street
McMinnville, TN 37110