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April 5, 2006

Opinion No. 06-062

Payment of Court Costs and Fines as a Condition of Parole

QUESTION

Does the Board of Probation and Parole (Board) have the authority to require payment of criminal court costs and fines arising out of the parolee's convictions as a condition of parole?

OPINION

The Board is authorized to condition parole on payment of fines but not criminal court costs.

ANALYSIS

The Code does not explicitly grant or deny the Board the authority to require payment of criminal court costs and fines as a condition of parole. *See* Tenn. Code Ann. §40-28-117(a)(authorizing Board to require restitution to crime victims as a parole condition). In determining the Board's authority it is appropriate to analogize to the authority of trial courts to require payment of court costs and fines as a condition of probation. Based on our review of the law, the Board is authorized to condition parole on payment of fines but not criminal court costs.

Payment of a fine can be a condition of probation. Tenn. Code Ann. §40-24-101(a)(4). It follows that payment of the fine imposed by the sentencing judge can be a condition of parole.

Criminal court costs, however, are not deemed part of the penalty, and persons may not be imprisoned in default of payment of costs. Tenn. Code Ann. §40-24-105(a). At one time the General Assembly explicitly prohibited trial judges from conditioning probation on the payment of costs. Tenn. Code Ann. §40-21-101 (1982)(repealed). Then the statute was changed to explicitly permit trial judges to condition probation on the payment of costs. Tenn. Code Ann. §40-21-101 (cum. supp. 1983)(repealed). Now the successor statute simply prohibits trial judges from conditioning the holding of a probation hearing upon the defendant's securing or paying the costs, and is silent on whether payment of court costs can be a condition of probation. Tenn. Code Ann. §40-35-303(f). *Compare* Tenn. Code Ann. §40-15-105(a)(2)(E) which explicitly provides that

pretrial division may be conditioned upon the payment of court costs. Although there are appellate court cases holding that payment of costs can be a condition of probation based on the repeal of the explicit prohibition on such a condition, those cases do not discuss §40-24-105 or the repeal of the subsequent explicit authorization of such a condition. *See State v. Weesner*, 1994 WL 406162 (Tenn. Crim. App.); *State v. Wallace*, 1993 WL 495293 (Tenn. Crim. App.). [1] In light of the absence of explicit statutory authority which would permit the conditioning of probation or parole on the payment of court costs and the provisions of Tenn. Code Ann. §40-25-105, we do not believe that the Board is authorized to condition parole on the payment of criminal court costs arising out of the parolee's convictions.

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[1]This Office has previously opined that 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. 03-106 (August 22, 2003); Op. Tenn. Atty. Gen. 03-072 (June 10, 2003); Op. Tenn. Atty. Gen. 00-162 (October 18, 2000).