

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
PO BOX 20207  
NASHVILLE, TENNESSEE 37202

July 12, 2005

Opinion No. 05-110

Entitlement to the Collected Fines and Court Costs after Transfer of a Case Pursuant to Tenn. Code Ann. § 40-35-214

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**QUESTION**

After a defendant's case has been transferred from one county to another for purposes of entering a guilty plea pursuant to Tenn.Code Ann. § 40-35-214, which court clerk's office is entitled to the collected fines and court costs?

**OPINION**

The fines and court costs collected after such a transfer are paid to the county in which the indictment was found, *i.e.*, the sending court.

**ANALYSIS**

Under Tennessee law a defendant has a constitutional right to be tried only in the county where the offense occurred; however he may properly waive the right to venue under Tenn.Const. art. I, § 9. Two provisions address the waiver of venue: Tenn. Code Ann. § 40-35-214 and Tenn. R. Crim. P. 21. Section 40-35-214 authorizes a change in venue upon the written request of the defendant, "subject to the approval of the district attorney general and the court having criminal jurisdiction for each county," for the limited purpose of allowing the defendant to plead guilty in one proceeding to charges pending in more than one county. Rule 21(a) allows a change of venue "upon motion of the defendant, or upon the court's own motion with the consent of the defendant," if a fair trial cannot be had in the original jurisdiction due to undue publicity or "any other cause." Section 40-35-214 does not address the question of collection of fines and costs after a venue change under that statutory authority. In contrast, Rule 21(k) specifies, in cases of venue change to ensure a fair trial, that:

All fines and forfeitures in such cases go to the county in which the indictment was found, and judgment must be rendered accordingly. The fees of all jurors and witnesses, on being properly certified by the clerk of the receiving court, are a charge on the county in which the indictment was found, in like manner as if the trial had not been removed.

Two other statutes contain similar provisions for fines and costs to be collected by the county where an indictment originates. Tenn. Code Ann. § 5-8-104 provides that “fines, amercements, forfeitures, and recoveries in prosecutions for offenses below the grade of petit larceny shall be applied to the use of the county where they originate.” Tenn. Code Ann. § 40-24-106 provides that all fines and forfeitures recovered in felony cases shall be paid into the state treasury, but that “fines and forfeitures in all other state cases go to the county in which the indictment was found.”

Thus, it is the opinion of this office that the sending court clerk is entitled to the collected fines and court costs in a case that has been transferred to another county for entry of a guilty plea.

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PAUL G. SUMMERS  
Attorney General

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MICHAEL E. MOORE  
Solicitor General

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RACHEL E. WILLIS  
Assistant Attorney General

Requested by:

Lawrence Ray Whitley  
District Attorney General  
113 West Main Street  
Gallatin, TN 37066