

OSCA Response to the \$3 Sheriff's Retirement Fund Cost

OSCA received an inquiry about the latest Attorney General's opinion on municipal divisions assessing the sheriff's retirement fund and prepared the attached statement on the topic.

For your information, OSCA will be including this narrative in the next traffic disposition statistics letter/e-mail that will be sent to every municipal clerk and judge prior to the end of the month

Regarding the recent Attorney General opinion on municipal division assessment of the sheriff's retirement fee, in brief, our answer is that neither the statute nor the case law in question have changed in this regard since the time our current guidance to courts was originally put in place, therefore our guidance will not change. The Attorney General opinion discussed below may not concur with our guidance, but neither does it have the force and effect of law. Until the law, either by case law or statute, is changed, our guidance will remain in place and we will not recommend to courts that the Sheriff's Retirement Fund be assessed on municipal division cases.

As you know, on March 21, 2011, the Attorney General's Office issued revised opinion number 8 - 2010 regarding the assessment of the Sheriff's Retirement Fund on municipal division cases. Although some of the reasoning has been revised, the opinion reaches the same result as the original opinion, that the surcharge should be assessed in municipal division cases. However, the opinion itself says that the question is a very close one.

The Attorney General was asked to interpret section 57.955 RSMo as to whether the \$3 sheriff's surcharge that is assessed in criminal cases should be assessed in municipal ordinance cases.

It is our belief that the AG Opinion is contrary to how the courts have interpreted that statute throughout the years. OSCA's guidance to courts on cost assessment has been to strictly construe costs, based on case law which states that costs are to be strictly construed.

We have attached several of those cases that address the assessment of court costs. These cases indicate that costs are of statutory origin and shall be strictly construed. Cramer v. Smith established the long standing premise that "at common law costs as such in a criminal case were unknown.

As a consequence it is the rule as well in criminal as in civil cases that the recovery and allowance of costs rests entirely on statutory provisions -- that no right to or liability for costs exists in the absence of statutory authorization. Such statutes are penal in their nature, and are to be strictly construed." [20 C. J. S. p. 677.]

It is interesting to note that in Webster Groves v. Erickson, the court goes on to say "ordinance provisions imposing penalties are to be strictly construed against the prosecuting authority and are not to be extended by implication." Levin v. Carpenter, 332 S.W.2d 862, 865 (Mo. 1960).

See also *Kansas City v. Bott* which discusses the nature of ordinance violations.

In addition, if you look at Chapter 488 as a whole, you will see how costs have been specifically addressed.

Clerk fee; 488.012.3) Prior to adjustment by the supreme court, the following fees, costs and charges shall be collected;

(6) Twelve dollars for municipal court costs,

CVC surcharge: 488.5339

A surcharge of seven dollars and fifty cents shall be assessed pursuant to section 595.045, RSMo, as costs in each court proceeding filed in any court in the state in all criminal cases including violations of any county ordinance or any violation of criminal or traffic laws of the state, including an infraction and violation of a municipal ordinance; except that no such fee shall be collected in any proceeding in any court when the proceeding or the defendant has been dismissed by the court.....

POST: 488.5336

A surcharge in the amount of one dollar shall be assessed as provided in this section, and shall be collected and disbursed as provided in sections 488.010 to 488.020. This section is for criminal cases involving violations of any county ordinance or a violation of any criminal or traffic laws of the state, including infractions, or violations of municipal ordinances.

Court Automation 488.056 and 488.027

In addition to all other court costs provided by law, in all civil cases filed in the circuit courts of this state and in all criminal cases including violations of any municipal or county ordinance heard by an associate circuit judge or any violation of criminal or traffic laws of this state, including an infraction, a fee in an amount determined pursuant to sections 488.015 to 488.020 shall be assessed as costs, except that, no such fee shall be collected in any proceeding involving a violation of an ordinance or state law when a criminal proceeding or defendant has been dismissed by the court or when costs are waived or are to be paid by the state, county or municipality.

Law Enforcement Training 488.5336

1. A surcharge of two dollars may be assessed as costs in each criminal case involving violations of any county ordinance or a violation of any criminal or traffic laws of the state, including infractions, or violations of municipal ordinances, provided that no such fee shall be collected in any proceeding in any court when the proceeding or defendant has been dismissed by the court or when costs are to be paid by the state, county or municipality. For violations of the general criminal laws of the state or county ordinances, no such surcharge shall be collected unless it is authorized by the county government where the violation occurred. For violations of municipal ordinances, no such surcharge shall be collected unless it is authorized by the municipal government where the violation occurred. If imposed by a municipality, such surcharges shall be collected by the clerk of the municipal court responsible for collecting court costs and fines and shall be transmitted monthly to the treasurer of the municipality where the violation occurred in cases of violations of municipal ordinances. If imposed by a county, such surcharges shall be collected and disbursed as provided in sections 488.010 to 488.020. Such surcharges shall be payable to the treasurer of the county where the violation occurred in the case of

violations of the general criminal laws of the state or county ordinances. Without regard to whether the aforementioned surcharge is assessed, a surcharge in the amount of one dollar shall be assessed as provided in this section, and shall be collected and disbursed as provided in sections 488.010 to 488.020 and payable to the state treasury to the credit of the peace officer standards and training commission fund created in section 590.178, RSMo. Such surcharges shall be in addition to the court costs and fees and limits on such court costs and fees established by section 66.110, RSMo, and section 479.260, RSMo.

The Sheriff's Retirement Surcharge does not contain that language.

Without changes to the statutory language to clarify the issue, OSCA remains with its original recommendation that costs are strictly construed.

OSCA's recommendations for assessment of costs is based on costs and fees that are clearly provided in the legislation. Therefore, there will be no change in the Municipal Costs Card as published by OSCA until legislation is passed clarifying the application of the Sheriff's Retirement Fund to municipal division cases.

Nancy Griggs
Division Director, Court Services
Office of State Courts Administrator
P.O. Box 104480, Jefferson City, MO 65110
(573) 526-8801 Fax: (573) 522-5961
Nancy.Griggs@courts.mo.gov