



STATE OF KANSAS

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April 11, 1979

ATTORNEY GENERAL OPINION NO. 79- 48

Mr. Jay W. Vander Velde
Lyon County Attorney
Lyon County Courthouse
Emporia, Kansas 66801

Re: State Boards, Commissions and Authorities -- Law
Enforcement Training Center -- Assessments Imposed
and Collected by State and Municipal Courts.

Synopsis: As stated in Attorney General Opinion No. 78-188, the assessment required by K.S.A. 1978 Supp. 74-5612 constitutes a fine and is not subject to the legal constraints against use of fees as general revenue sources. Such assessment is to be imposed by a state or municipal court in addition to such court's imposition of a fine or forfeiture of bail for criminal law violations. In determining the amount of such assessment, court costs incurred in connection with such other fine or forfeiture are not to be considered.

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Dear Mr. Vander Velde:

Your letter of February 27, 1979 poses several questions regarding K.S.A. 1978 Supp. 74-5612. Subsection (a) thereof provides in part that whenever

"an officer of any court of this state or any municipal court shall impose a fine or order a bail forfeiture as a penalty for a violation of any of the laws of this state, ordinances of a city or resolutions of a county, such

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officer shall also impose and collect an assessment in addition to such fine or forfeiture. Such officer shall remit all moneys received from such assessments to the state treasurer at least monthly. Upon receipt thereof, the state treasurer shall deposit the entire amount in the state treasury and credit the same to the law enforcement training center fund created by this act."

Subsection (b) of this statute establishes dollar amounts of the assessments authorized by the foregoing quoted provision.

In answer to your first question, the effective date of K.S.A. 1978 Supp. 74-5612 was July 1, 1978. That statute was enacted as Section 9 of Chapter 323 of the 1978 Session Laws of Kansas. Section 15 thereof provided that said act would "take effect and be in force from and after its publication in the statute book." The meaning of such statement is explained by K.S.A. 1978 Supp. 45-310(a), as follows:

"Whenever any bill or act of the legislature shall provide that the same shall be effective from and after its publication in the statute book, the words 'publication in the statute book' mean the date of publication of the session laws of Kansas specified in the certificate provided for by K.S.A. 45-311."

K.S.A. 45-311 states:

"The secretary of state shall prefix to each printed volume of the laws his certificate . . . specifying the date of the publication of such volume. The date of the publication so specified shall not be sooner than the date that at least a limited number of the volume are in the office of the secretary of state and shall be July 1 if a limited number of the volume are in the office of the secretary of state on or before July 1, unless an earlier date for any volume is directed by concurrent resolution of the legislature."

The secretary of state's certificate in the 1978 Session Laws declares that the laws contained therein "will take effect and be in force from and after the first day of July, A.D. 1978."

You also have questioned the constitutionality of K.S.A. 1978 Supp. 74-5612, in light of Attorney General Opinion No. 78-165. In that Opinion, the Attorney General concluded that the additional fee of

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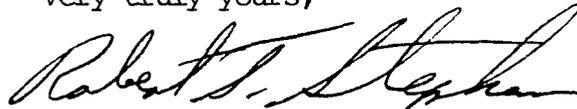
one dollar authorized to be assessed by K.S.A. 1978 Supp. 28-173a constituted an unlawful exercise of the general revenue power of the state in the guise of assessment of court costs for the administration of the unified court system. Approximately one month later, Attorney General Opinion No. 78-188 was issued. The inquiry in that Opinion concerned the validity of K.S.A. 1978 Supp. 74-5612, in light of Attorney General Opinion No. 78-165. Opinion No. 78-188 states thus:

"The sum to be assessed pursuant to section 9 [K.S.A. 1978 Supp. 74-5612] is not a fee but a fine, and the constraints against the use of fee provisions as a general revenue source are largely inapplicable . . . to provisions for the assessment of fines and the disposition of the proceeds thereof."

The Opinion concluded that the assessment authorized by K.S.A. 1978 Supp. 74-5612 is not invalid for any of the reasons set forth in Opinion No. 78-165. We concur with that conclusion.

Your final inquiry is whether court costs are included as part of the "fine or forfeiture" in determining the assessment imposed pursuant to subsection (b). We do not find court costs to be applicable in that determination. Subsection (a) requires that when a "fine" is imposed "as a penalty" an additional assessment shall be collected. A fine is an amount of money exacted from a person guilty of a crime as a punishment. 36 Am.Jur.2d Forfeitures and Penalties §4. The words "fine" and "penalty" are often used synonymously. Ibid. Court costs are not a fine imposed as a penalty. Rather, they are born by a convicted defendant for expenses incident to trial and prosecution. 20 Am.Jur.2d Costs §100. Therefore, we find that court costs are not a fine or penalty and should not be considered when imposing an assessment pursuant to K.S.A. 1978 Supp. 74-5612(b).

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Kurt J. Shernuk
Assistant Attorney General

RTS:TDH:KJS:may