

August 30, 1994

OPINION NO. 94-050

The Honorable James A. Philomena  
Mahoning County Prosecuting Attorney  
120 Market Street  
Youngstown, Ohio 44503-1726

Dear Prosecutor Philomena:

You have requested an opinion regarding the assessment of the state-mandated court costs imposed by R.C. 2743.70 and R.C. 2949.091. Specifically, you wish to know what constitutes a "moving violation" for purposes of R.C. 2743.70 and R.C. 2949.091.

#### **Assessment of State Mandated Court Costs**

R.C. 2743.70 and R.C. 2949.091 set forth provisions concerning the imposition of state-mandated court costs against nonindigent individuals. R.C. 2743.70(A) states:

(1) The court, in which any person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, shall impose the following sum as costs in the case in addition to any other court costs that the court is required by law to impose upon the offender:

- (a) thirty dollars, if the offense is a felony;
- (b) nine dollars, if the offense is a misdemeanor.

The court shall not waive the payment of the thirty or nine dollars court costs, unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender....

(2) The juvenile court in which a child is found to be a delinquent child or a juvenile traffic offender for an act which, if committed by an adult, would be an offense other than a traffic offense that is not a moving violation, shall impose the following sum as costs in the case in addition to any other court costs that the court is required or permitted by law to impose upon the delinquent child or juvenile traffic offender:

- (a) thirty dollars, if the act, if committed by an adult, would be a felony;
- (b) nine dollars, if the act, if committed by an adult, would be a misdemeanor.

The thirty or nine dollars court costs shall be collected in all cases unless the court determines the juvenile is indigent and waives the payment of all court costs, or enters an order on its journal stating that it has determined that the juvenile is indigent, that no other court costs are to be taxed in the case, and that the payment of the thirty or nine dollars court costs is waived.

Similarly, R.C. 2949.091(A) provides:

(1) The court, in which any person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, shall impose the sum of eleven dollars as costs in the case in addition to any other court costs that the court is required by law to impose upon the offender.... The court shall not waive the payment of the additional eleven dollars court costs, unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender.

(2) The juvenile court, in which a child is found to be a delinquent child or a juvenile traffic offender for an act which, if committed by an adult, would be an offense other than a traffic offense that is not a moving violation, shall impose the sum of eleven dollars as costs in the case in addition to any other court costs that the court is required or permitted by law to impose upon the delinquent child or juvenile traffic offender.... The eleven dollars court costs shall be collected in all cases unless the court determines the juvenile is indigent and waives the payment of all court costs, or enters on its journal stating that it has determined that the juvenile is indigent, that no other court costs are to be taxed in the case, and that the payment of the eleven dollars court costs is waived.

These sections thus require a court, in which any nonindigent person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, or a juvenile court, in which a nonindigent child is found to be a delinquent child or a juvenile traffic offender for an act which, if committed by an adult, would be an offense other than a traffic offense that is not a moving violation, to impose a specific sum of money as costs in the case.

### **"Moving Violation" Defined**

R.C. 2743.70(D)(1) defines the term "moving violation" for purposes of R.C. 2743.70 as follows:

"Moving violation" means any violation of any statute or ordinance, other than section 4513.263 of the Revised Code<sup>1</sup> or an ordinance that is substantially

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<sup>1</sup> R.C. 4513.263 sets forth the offense of failure to wear an occupant restraining device while operating an automobile, school bus, or taxicab on any street or highway, or occupying, as a passenger, a seating position on the front seat of an automobile being operated on any street or highway.

equivalent to that section, that regulates the operation of vehicles, streetcars, or trackless trolleys on highways or streets or that regulates size or load limitations or fitness requirements of vehicles. "Moving violation" does not include the violation of any statute or ordinance that regulates pedestrians or the parking of vehicles. (Footnote added.)

Pursuant to R.C. 2949.091(D)(1), the term "moving violation," as used in R.C. 2949.091, has the same meaning as in R.C. 2743.70. Thus, R.C. 2743.70(D)(1) defines "moving violation" for purposes of R.C. 2743.70 and R.C. 2949.091.

It is a codified rule of statutory construction that "[w]ords and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly." R.C. 1.42. It follows, therefore, that, as used in R.C. 2743.70 and R.C. 2949.091, "moving violation" means any violation of any statute or ordinance -- other than R.C. 4513.263, an ordinance that is substantially equivalent to that section, or a statute or ordinance that regulates pedestrians or the parking of vehicles -- that regulates the operation of vehicles, streetcars, or trackless trolleys on highways or streets or that regulates size or load limitations or fitness requirements of vehicles.

As a final matter, 1982 Op. Att'y Gen. No. 82-050 examined the definition of "moving violation" set forth in Section 169 (uncodified) of Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981)<sup>2</sup> and concluded that a violation of a statute or ordinance which governs, directs, limits, or prohibits the operation of a motor vehicle is a moving violation within the meaning of Section 169. Op. No. 82-050 stated:

Your first two questions seek clarification of the types of traffic offenses that constitute "moving violations." As was previously discussed, the court costs specified in Section 169 and Section 167<sup>3</sup> are not imposed in the case of a traffic

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<sup>2</sup> Section 169 (uncodified) of Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981) provided that, notwithstanding R.C. 2743.70, the sum of ten dollars is to be imposed, in addition to any other costs charged by a court, when a person has been convicted of or has pled guilty to any offense other than a traffic offense that is not a moving violation, and, notwithstanding R.C. 2743.70, the sum of ten dollars is to be imposed, in addition to any other costs that a juvenile court is required or permitted by law to impose upon a delinquent child or juvenile traffic offender, when a child is found to be a delinquent child or a juvenile traffic offender for an act which, if committed by an adult, would be an offense other than a traffic offense that is not a moving violation. The provisions of Section 169 were in effect until June 30, 1983.

<sup>3</sup> Section 167 (uncodified) of Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981) read as follows:

The court in which any person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, shall impose the sum of three

offense which is not a moving violation. Section 169 defines a "moving violation" for purposes of that section and Section 167 as:

any violation of sections 4511.01 to 4511.78, 4511.99, and 4513.01 to 4513.36 of the Revised Code regulating the operation of vehicles, streetcars, or trackless trolleys on highways or streets, or any violation of any other law or ordinance regulating the operation of vehicles, streetcars, or trackless trolleys on highways or streets. (Emphasis added.)

You have specifically asked what types of violations are included within the portion of Section 169 emphasized above. Pursuant to that clause, any violation of a law or ordinance which regulates the operation of vehicles, streetcars or trackless trolleys is a moving violation. Thus, it becomes necessary to determine what constitutes the regulation of the operation of such vehicles.

It is a basic premise of statutory construction that words are to be given their plain or common meaning. [R.C. 1.42.] "Regulate" is defined by Black's Law Dictionary 1156 (5th ed. 1979) as "to govern or direct according to rule or to bring under control of constituted authority, to limit and prohibit, to arrange in proper order, and to control that which already exists." *A law or ordinance regulating the operation of a vehicle, streetcar or trackless trolley, therefore, would be one which governs, directs, limits or prohibits such operation.*

The application of this definition can best be illustrated through the use of several examples. For instance, a statute or ordinance which requires the licensure of a vehicle operator is one which regulates the operation of a motor vehicle because it prohibits the operation of a vehicle by a person who does not possess the specified license. Similarly, a statute or ordinance which requires the use of headlights from dusk to dawn also must be found to regulate the operation of a motor vehicle because it limits the manner in which such a vehicle may be operated.

Op. No. 82-050 at 2-146 (emphasis and footnote added). Accordingly, for a violation of a statute or ordinance to be considered a moving violation, the statute or ordinance must be found to govern, direct, limit, or prohibit the operation of vehicles, streetcars, or trackless trolleys on highways or streets, or the size or load limitations or fitness requirements of vehicles.

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dollars as costs in the case in addition to any other court costs that the court is required by law to impose upon the offender. All such moneys shall be transmitted on the first business day of each month by the clerk of the court to the treasurer of state and deposited by the treasurer in the General Revenue Fund. The additional costs imposed by this section shall not be waived by the court unless all costs imposed by law upon the offender are waived.

As used in this section, "moving violation" has the same meaning as in Section 169 of this act.

This section shall apply only through June 30, 1983.

**Conclusion**

In light of the foregoing, it is my opinion, and you are advised that as used in R.C. 2743.70 and R.C. 2949.091, "moving violation" means any violation of any statute or ordinance (other than R.C. 4513.263, an ordinance that is substantially equivalent to that section, or a statute or ordinance that regulates pedestrians or the parking of vehicles) that regulates the operation of vehicles, streetcars, or trackless trolleys on highways or streets or that regulates size or load limitations or fitness requirements of vehicles.

Respectfully,

LEE FISHER  
Attorney General

August 30, 1994

The Honorable James A. Philomena  
Mahoning County Prosecuting Attorney  
120 Market Street  
Youngstown, Ohio 44503-1726

SYLLABUS:

94-050

As used in R.C. 2743.70 and R.C. 2949.091, "moving violation" means any violation of any statute or ordinance (other than R.C. 4513.263, an ordinance that is substantially equivalent to that section, or a statute or ordinance that regulates pedestrians or the parking of vehicles) that regulates the operation of vehicles, streetcars, or trackless trolleys on highways or streets or that regulates size or load limitations or fitness requirements of vehicles.