OPINION NO. 91-022

Syllabus:

The court costs imposed by R.C. 2743.70(A)(1) and R.C. 2949.091(A)(1) are to be charged per case, and not per offense.

To: Stephanie Tubbs Jones, Cuyahoga County Prosecuting Attorney, Cleveland, Ohio

By: Lee Fisher, Attorney General, April 16, 1991

I have before me your predecessor's request for an opinion regarding the imposition of state mandated court costs. Specifically, your predecessor asked

whether the state mandated court costs imposed by R.C. 2743.70 and R.C. 2949.091 are to be charged per offense or per case.

R.C. 2743.70 and R.C. 2949.091, in general, set forth provisions concerning the imposition of additional court costs and bail against nonindigent persons. Among these provisions is R.C. 2743.70(A)(1), which provides:

> 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:
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> (a) Twenty dollars, if the offense is a felony;
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> (b) Six dollars, if the offense is a misdemeanor.
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> The court shall not waive the payment of the twenty or six 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. 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 reparations fund. (Emphasis added.)

Additionally, R.C. 2949.091(A)(1) similarly provides:

> 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 ten 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 of state in the general revenue fund. The court shall not waive the payment of the additional ten 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. (Emphasis added.)

R.C. 2743.70(A)(1) and R.C. 2949.091(A)(1), thus, require a 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, to impose a specific sum of money as costs in the case.[1]

It is a well-established tenet that the paramount purpose in the interpretation of a statute is to determine and effectuate the intention of the General Assembly. *Henry v. Central Nat'l Bank,* 16 Ohio St. 2d 16, 242 N.E.2d 342 (1968) (syllabus, paragraph two). Legislative intention is primarily determined from the language of a statute, *Stewart v. Trumbull County Bd. of Elections,* 34 Ohio St. 2d 129, 130, 296 N.E.2d 676, 677 (1973), and where that intention is plainly and unambiguously set out in the language employed by the General Assembly, resort to other tenets of statutory construction is unnecessary. *Katz v. Department of Liquor Control,* 166 Ohio St. 229, 231, 141 N.E.2d 294, 295 (1957); *see* R.C. 1.49.

An examination of the language of R.C. 2743.70(A)(1) and R.C. 2949.091(A)(1) clearly reveals that a court shall impose the specific sum of money,

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[1] I note that R.C. 2743.70(A)(2) and R.C. 2949.091(A)(2) require a juvenile court to impose a specific sum of money as costs against a child 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. Since your request does not ask about the imposition of the costs of R.C. 2743.70(A) and R.C. 2949.091(A) against delinquent children or juvenile traffic offenders, I express no opinion as to the proper imposition of these costs against delinquent children and juvenile traffic offenders.

mandated by these sections, "as costs in the case." The language of R.C. 2743.70(A)(1) and R.C. 2949.091(A)(1), thus, unambiguously discloses that the General Assembly's intention in enacting these sections was to provide for the imposition of a specific sum of money as costs *in any case* in which a person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation. I note that neither R.C. 2743.70 nor R.C. 2949.091 sets forth a definition for the term "case." Terms not statutorily defined are to be accorded their common or ordinary meaning. R.C. 1.42; *see, e.g., State v. Dorso*, 4 Ohio St. 3d 60, 62, 446 N.E.2d 449, 451 (1983). *Black's Law Dictionary* 215 (6th ed. 1990) defines the term "case" as "an aggregate of facts which furnishes occasion for the exercise of the jurisdiction of a court of justice." It is clear, therefore, that the costs mandated in R.C. 2743.70 and R.C. 2949.091 are to be imposed when an aggregate of facts furnishing a court the opportunity to exercise its jurisdiction results in a person being convicted of or pleading guilty to any offense other than a traffic offense that is not a moving violation. *See generally Bryan Chamber of Commerce v. Board of Tax Appeals*, 5 Ohio App. 2d 195, 200, 214 N.E.2d 812, 815 (Williams County 1966) ("[i]t should be presumed that the Legislature used language contained in the statute advisably and intelligently and expressed its intent by the use of the words found in the statute").

In addition to the foregoing, I note that prior to and subsequent to the enactment of R.C. 2743.70 and R.C. 2949.091, it has been the continual practice in Ohio for offenses to be joined in one case for purposes of facilitating the administration of justice. *See* R.C. 2941.04 ("[a]n indictment or information may charge two or more different offenses connected together in their commission, or different statements of the same offense, or two or more different offenses of the same class of crimes or offenses, under separate counts, and if two or more indictments or informations are filed in such cases the court may order them to be consolidated"); Ohio R. Crim. P. 8(A) ("[t]wo or more offenses may be charged in the same indictment, information or complaint in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character, or are based on the same act or transaction, or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or are part of a course of criminal conduct"). *See generally State v. Dunkins*, 10 Ohio App. 3d 72, 72, 460 N.E.2d 688, 690 (Summit County 1983) ("[t]he law favors joinder for public policy reasons, such as: to conserve judicial economy and prosecutorial time; to conserve public funds by avoiding duplication inherent in multiple trials; to diminish the inconvenience to public authorities and witnesses; to promptly bring to trial those accused of a crime; and to minimize the possibility of incongruous results that can occur in successive trials before different juries"). Hence, it is a commonly acknowledged and statutorily recognized practice to consolidate two or more offenses charged against a person into one case.

It, therefore, is readily apparent that the General Assembly was cognizant of the fact that situations would arise in which a person would be convicted of or plead guilty to more than one offense in a case when it enacted R.C. 2743.70 and R.C. 2949.091. *See generally State v. Frost*, 57 Ohio St. 2d 121, 125, 387 N.E.2d 235, 238 (1979) ("[i]t is axiomatic that it will be assumed that the General Assembly has knowledge of prior legislation when it enacts subsequent legislation"); *In re Estate of Tonsic*, 13 Ohio App. 2d 195, 197, 235 N.E.2d 239, 241 (Summit County 1968) ("[t]he Legislature is presumed to be cognizant of all prior sections of the Code"); *East Ohio Gas Co. v. Akron*, 2 Ohio App. 2d 267, 270, 207 N.E.2d 780, 783 (Summit County 1965) ("[i]n the interpretation of statutes, it is presumed that the Legislature knew the state of the law at the time of enactment, and it must be presumed that the Legislature knew of the so-called pre-emption doctrine as it had been developed over the years in this state"), *aff'd*, 7 Ohio St. 2d 73, 218 N.E.2d 608 (1966).

Aware of this common practice, the General Assembly made no attempt, through the language of R.C. 2743.70 and R.C. 2949.091, to indicate that the costs mandated by these sections were conditioned upon the number of offenses of which a person was convicted or to which he plead guilty in a single case. Rather, language set forth in these sections indicates the contrary. For example, both R.C. 2743.70(C) and R.C. 2949.091(C) limit the costs to be imposed pursuant to R.C. 2743.70 and R.C. 2949.091. R.C. 2743.70(C) states that "[n]o person shall be placed or held in jail for failing to pay the additional twenty or six dollars court costs...that

are required to be paid by this section." R.C. 2949.091(C) provides "[n]o person shall be placed or held in a detention facility for failing to pay the additional ten dollars court costs...that are required to be paid by this section." The language of R.C. 2743.70(C) and R.C. 2949.091(C), thus, indicates that the costs imposed by these sections is limited in any case to twenty or six dollars, and ten dollars, respectively. *See generally Brown v. Martinelli,* 66 Ohio St. 2d 45, 50, 419 N.E.2d 1081, 1084 (1981) (it is a "'basic presumption in statutory construction that the General Assembly is not presumed to do a vain or useless thing, and that when language is inserted in a statute it is inserted to accomplish some definite purpose'" (quoting *State ex rel. Cleveland Elec. Illum. Co. v. Euclid,* 169 Ohio St. 476, 479, 159 N.E.2d 756, 759 (1959))).

Based upon the foregoing, it is my opinion, and you are hereby advised that the court costs imposed by R.C. 2743.70(A)(1) and R.C. 2949.091(A)(1) are to be charged per case, and not per offense.