

December 14, 2022

The Honorable Julia R. Bates
Lucas County Prosecuting Attorney
Lucas County Courthouse
700 Adams Street, Suite 250
Toledo, Ohio 43604

SYLLABUS:

2022-018

1. Pursuant to R.C. 2301.24, the cost for copies of court transcripts is subject to the fee schedule in R.C. 149.43 and is not set by the Court of Common Pleas. (1989 Op. Att’y Gen. No. 89-073, overruled in part; and 2002 Op. Att’y Gen. No. 2002-014, modified in part, as a result of statutory amendment.)
2. The Court of Common Pleas does not have discretion to limit free electronic copies of transcripts to only those copies of transcripts filed in delinquency or criminal cases.



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OPINION NO. 2022-018

The Honorable Julia R. Bates
Lucas County Prosecuting Attorney
Lucas County Courthouse
700 Adams Street, Suite 250
Toledo, Ohio 43604

Dear Prosecutor Bates:

You have requested an opinion regarding the authority of the Lucas County Court of Common Pleas to adopt a fee schedule for copies of transcripts. This opinion addresses compensation *only* for copies of transcripts, not originals, and I have framed your questions as follows:

1. Does R.C. 2301.24 permit the Court of Common Pleas to set a monetary fee of \$2.75 per page, as opposed to “at cost” as required by R.C. 149.43(B)(1), for copies of transcripts after the original is prepared?
2. Does R.C. 2301.24 permit the Court of Common Pleas to limit free electronic copies of transcripts to only those filed in delinquency or criminal cases?

For the reasons that follow, I find that both questions are answered in the negative.

I

The Court of Common Pleas (“Court”) consists of the criminal and civil courts, as well as the division of domestic relations, which includes juvenile courts that handle delinquency matters. R.C. 2301.03. Pursuant to R.C. 2301.20, “all civil and criminal actions in the court of common pleas shall be recorded.” *See also* R.C. 2151.35(A)(2), *accord* Ohio Juv. R. 37(A).

The Court is required to appoint an official reporter, and may appoint assistant reporters as needed, to “take accurate notes of or electronically record the oral testimony” in proceedings and hearings. R.C. 2301.18; R.C. 2301.20; R.C. 2301.23. Reporters are compensated for their duties as part of their appointment by the Court, receive a daily fee as part of court costs, and are also paid for preparing transcripts and copies. R.C. 2301.21; R.C. 2301.22; R.C. 2301.24; *see generally*, 1999 Op. Att’y Gen. No. 99-003, at 2-18 to 2-19; *see also State ex rel. Slagle v. Rogers*, 106 Ohio St.3d 1402, 2005-Ohio-3040, 829 N.E.2d 1215, ¶ 19 (“a party to an action may not circumvent payment to the official court reporter of the fees designated by the court pursuant to R.C. 2301.24 for a copy of a transcript of proceedings in that action by requesting a certified copy of that transcript from the clerk of court pursuant to R.C. 2303.20(Z”).

The transcripts of proceedings and hearings generated by reporters are public records. *State ex rel. Cincinnati Enquirer v. Winkler*, 101 Ohio St.3d 382, 2004-Ohio-1581, 805 N.E.2d 1094, ¶8 (the public’s right to open courts includes records and transcripts of the

proceedings); 1989 Op. Att’y Gen. No. 89-073, at 2-335 to 2-336; 1974 Op. Att’y Gen. No. 74-097, at 2-391 (“those records which a court...keep[s] are, with the exceptions noted in R.C. 149.43, public records”).

When requested, copies of public records are to be provided “at cost”. R.C. 149.43(B)(1). “At cost” is not defined, but has been interpreted as “the *actual costs* involved in making a copy, *unless the cost is otherwise set by statute.*” *State ex rel. Warren Newspapers v. Hutson*, 70 Ohio St.3d 619, 625, 1994-Ohio-5 (emphasis added), 640 N.E.2d 174, *citing* 1989 Op. Att’y Gen. No. 89-073; *State ex rel. Gambill v. Opperman*, 135 Ohio St.3d 298, 2013-Ohio-761, 986 N.E.2d 931, ¶ 31-33; *see also* Ohio Sup. R. 44(A). A statute, R.C. 2301.24, does set specific rates for copies of transcripts. Accordingly, the Ohio Supreme Court has held that R.C. 2301.24, not R.C. Chapter 149, sets the rates for copies of transcripts. *See, State ex rel. Newsome v. Hack*, 159 Ohio St.3d 44, 2020-Ohio-336, 146 N.E.3d 571, ¶7 (judgment vacated for other reasons); *State ex rel. Slagle v. Rogers*, 103 Ohio St. 3d 89, 92, 2004-Ohio-4353, 814 N.E.2d 55, *citing State ex rel. Dublin Securities, Inc. v. Ohio Div. of Securities* (1994), 68 Ohio St.3d 426, 429 (“when two statutes, one general and the other special, cover the same subject matter, the special provision is to be construed as an exception to the general statute which might otherwise apply”); *see also* 1989 Op. Att’y Gen. No. 89-073, at 2-336; 2002 Op. Att’y Gen. No. 2002-014, at 2-83.

II

Next, I turn to the relevant laws in this inquiry.

R.C. 149.43(B)(1) has not been substantively changed for the purposes of this analysis since at least 1996. It says, in relevant part:

[U]pon request by any person, a public office or person responsible for public records shall make copies of the requested public record available to the requester at cost and within a reasonable period of time.

R.C. 2301.24 provides how court reporters are compensated for making written transcripts. The section was substantively amended in 2012. Am.Sub.H.B. No. 487, 129 Ohio Laws, Part V, 1, 393-394. Before the 2012 amendment, R.C. 2301.24 stated that:

[t]he compensation of shorthand reporters for making transcripts and copies as provided in section 2301.23 of the Revised Code shall be fixed by the judges of the court of common pleas of the county wherein the trial is had. Such compensation shall be paid forthwith by the party for whose benefit a transcript is made.

(emphasis added).

The current version of R.C. 2301.24 states that:

[t]he compensation of reporters for making written transcripts as provided in section 2301.23 of the Revised Code shall be

fixed by the court of common pleas of the county in which the trial is held. If more than one transcript of the same testimony or proceeding is ordered, the reporter shall make copies of the transcript at cost pursuant to division (B)(1) of section 149.43 of the Revised Code or shall provide an electronic copy of the transcript free of charge.

(emphasis added).

III

Your first question asks whether, since the 2012 amendment to R.C. 2301.24, the Court is permitted to set the fee for copies of court transcripts. The answer is “no.”

A

The 2012 amendment to R.C. 2301.24 modified the Court’s authority: whereas the Court could set compensation for “transcripts and copies” under the pre-2012 amendment, it can set compensation only for “written transcripts” today. The updated language specifically states that “the reporter *shall make copies of the transcript at cost* pursuant to division (B)(1) of section 149.43 of the Revised Code.” (emphasis added) R.C. 2301.24. The use of “shall” indicates that the Court does not have discretion to modify the rates for copies of transcripts. *State v. Golphin*, 81 Ohio St.3d 543, 545-546, 692 N.E.2d 608 (1998).

In sum, originals are still subject to the rates set by the Court, but copies are to be provided “at cost” per R.C. 149.43(B)(1). R.C. 2301.24; *see also* 2002 Op. Att’y Gen. No. 2002-014, syllabus, paragraph 3.

B

The 2012 statutory amendment impacts holdings in two previous Attorney General opinions regarding the Court’s authority to set fee schedules for transcripts and copies of transcripts.

First, 1989 Op. Att’y Gen. No. 89-073, paragraph 5 of the syllabus, is overruled by the new language in R.C. 2301.24, because the Court no longer sets the fees for transcript copies; they are set by R.C. 149.43(B)(1). *Id.*, syllabus, paragraph 5 (“Under R.C. 2301.24, the *judges of the court of common pleas shall fix the fee for copies of transcripts* obtained from the official shorthand reporter and the assistant shorthand reporter of the court of common pleas” (emphasis added)).

Second, the determination in 2002 Op. Att’y Gen. No. 2002-014, paragraph 2 of the syllabus, is modified in the following way: while R.C. 2301.24 remains the statute under which transcript costs are set, it now refers back to R.C. 149.43(B)(1). And under the latter statute, the fees for copies are no longer set by the Court. *Id.*, syllabus, paragraph 2 (“A party in a trial of a civil or criminal action in the court of common pleas that requests a photocopy of a transcript previously prepared pursuant to R.C. 2301.23 in the action *is required to pay the compensation fixed by the judges of*

the court of common pleas under R.C. 2301.24 in order to obtain the photocopy of the transcript from the court” (emphasis added).

The remainders of both the 1989 and 2002 opinions are not changed by this opinion.

IV

Your second question asks if the Court has discretion to provide no-cost copies of transcripts from delinquency or criminal cases only. Again, the answer is “no.”

Recordings in all divisions of the Court—criminal, civil, and domestic relations—are made in accordance with R.C. 2301.20. R.C. 2301.20; R.C. 2151.35(A)(2). Transcripts of recordings under R.C. 2301.20 are furnished under R.C. 2301.23. R.C. 2301.23 (“When notes have been taken or an electronic recording has been made...the reporter reporting the case shall make full and accurate transcripts of the notes or electronic recording”). There are no exclusions listed, meaning that all proceedings and hearings are to be recorded in the same manner and their transcriptions treated the same way. *Pioneer Linen Supply Co. v. Evatt*, 146 Ohio St. 248, 251, 65 N.E.2d 711 (1946) (“what is not clearly excluded from the operation of a law is clearly included therein”). Reporters receive compensation for transcripts generated pursuant to R.C. 2301.23 under the scheme set out in R.C. 2301.24. R.C. 2301.24.

In addition to providing copies of transcripts “at cost pursuant to division (B)(1) of section 149.43 of the

Revised Code”, R.C. 2301.24 states that, “[i]f more than one transcript of the same testimony or proceeding is ordered, the reporter shall make copies of the transcript at cost pursuant to division (B)(1) of section 149.43 of the Revised Code *or shall provide an electronic copy of the transcript free of charge.*” R.C. 2301.24 (emphasis added). The use of “shall” again indicates a lack of discretion for the Court to limit the proceedings for which an electronic copy can be provided *gratis*. *Golphin*, 81 Ohio St.3d 543, 545-546. It follows that the Court does not have discretion to limit free electronic transcripts of cases to only transcripts filed in delinquency and criminal cases.

Conclusions

Accordingly, it is my opinion, and you are hereby advised that:

1. Pursuant to R.C. 2301.24, the cost for copies of court transcripts is subject to the fee schedule in R.C. 149.43 and is not set by the Court of Common Pleas. (1989 Op. Att'y Gen. No. 89-073, overruled in part; and 2002 Op. Att'y Gen. No. 2002-014, modified in part, as a result of statutory amendment.)
2. The Court of Common Pleas does not have discretion to limit free electronic copies of transcripts to only those copies of transcripts filed in delinquency or criminal cases.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive, flowing style.

DAVE YOST
Ohio Attorney General