

OPINION 65-48

Syllabus:

A county court has no authority to provide, by rule of court, that a defendant in a misdemeanor case who requests a jury trial, must first deposit or secure the costs for subpoena and empaneling a jury.

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To: Clyde W. Osborne, Mahoning County Pros. Atty., Youngstown, Ohio
By: William B. Saxbe, Attorney General, March 31, 1965

Your request for my opinion reads, in pertinent part, as follows:

"1. May a county court provide by rule of court that a defendant in a misdemeanor case (including traffic offenses where five (5) days or more jail time is possible) who requests a jury trial, must first deposit or secure the costs for subpoena and empaneling such jury?

"2. What ruling would be made on the above situation if the rules provided for the filing in the alternative of a poverty affidavit in lieu of costs or security?"

It must first be pointed out that county courts are creatures of statute, and thus, have only the powers as are vested in them by the enabling legislation. Gallagher v. Billmaier, 79 Ohio Law Abs., 417 (1958). In order to ascertain whether or not a county court has the power to require a defendant in a misdemeanor case to post a deposit to secure jury costs, it is necessary to examine the applicable legislation.

The statutes specify certain situations wherein a county court may require an advance deposit of money. Section 1907.282, Revised Code, gives the court authority to require an advance deposit for the filing of a civil action. Section 1907.311, Revised Code, gives the court the power to require security for the costs of a suit started by a nonresident of the county court district. Likewise, Section 1907.321, Revised Code, authorizes a surety requirement to be posted by the plaintiff when he moves from the county after suit is filed. Section 1913.12, Revised Code, requires the party requesting a jury to first deposit the money sufficient to pay the jury fee in actions of forcible entry and detainer. Section 2935.21, Revised Code, permits the court, in a misdemeanor case, prior to issuing the warrant, to require the complainant to give security for the costs, or if the court considers him irresponsible, security for the costs may be required by procuring another person to be liable for the costs

if the complaint is dismissed.

Section 1913.09, Revised Code, confers the right to trial by jury to the accused in certain criminal cases if a demand is made in accordance with the statute. That section, nor any other which created the county court system gives specific authority to require the accused to deposit or secure costs of a jury if one is demanded. It, therefore, becomes necessary to ascertain if the legislature intended the county court to have this power.

The legal doctrine of "expressio unius est exclusio alterius," while not a rule of substantive law, can be used as an aid in arriving at the intention of the legislature. Briefly, this doctrine means that when a statute enumerates certain specific things, the law implies the exclusion of the things not expressly mentioned.

When this doctrine of statutory interpretation is used to aid in arriving at the legislative intent in this situation, it is apparent that no statutory authority is given the county courts to require a defendant to post security for the costs of a jury. The reason for this result is clear. The enabling legislation has provided, in certain specific instances, that one of the parties to an action may be required to post security as set forth above. Yet, there has been no specific authority given to make a rule in a situation described in your request.

However, courts do possess certain inherent powers to make rules governing procedural matters. But they do not have the power to make rules which are inconsistent with the laws of the state. See, Cleveland Ry. Co. v. Halliday, 127 Ohio St., 278. A court does not have the power to require costs in advance when the same is not so provided by statute. The Legislature, by enacting special laws for advancement of costs, has excluded all other actions for which there is no provision. See, State, ex rel., Macek v. Busher, 46 Ohio App., 148; affirmed without opinion, 127 Ohio St., 554.

In view of the above discussion, it is not necessary to answer the second question.

Accordingly, it is my opinion and you are advised that a county court has no authority to provide, by rule of court, that a defendant in a misdemeanor case who requests a jury trial, must first deposit or secure the costs for subpoena and empaneling a jury.