



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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Jim Ryan
ATTORNEY GENERAL

FILE NO. 99-024

JUDICIAL SYSTEM:
Distribution of Fines and Fees

The Honorable Richard A. Devine
State's Attorney, Cook County
500 Richard J. Daley Center
Chicago, Illinois 60602

Dear Mr. Devine:

I have your letter wherein you inquire regarding the proper disposition of fines and fees in criminal and quasi-criminal cases when a conflict exists between the statute specifying distribution and a court order pertaining thereto. For the reasons stated, it is my opinion that the disposition of fines and fees is controlled by statute, and that a court order which provides for a different disposition is invalid to the extent that it deviates therefrom.

As you have noted, sections 27.5 and 27.6 of the Clerks of Courts Act (705 ILCS 105/27.5, 27.6 (West 1998)) provide for the allocation and distribution of fines and fees in cases in which there is a conviction, order of supervision or any other

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disposition for a violation of Chapters 3, 4, 6, 11 or 12 of the Illinois Vehicle Code (625 ILCS 5/3-100 et seq., 5/4-101 et seq., 5/6-100 et seq., 5/11-100 et seq., 5/12-101 et seq. (West 1998)), or a similar provision of a local ordinance, as well as any violation of the Child Passenger Protection Act (625 ILCS 25/1 (West 1998)) or a similar provision of a local ordinance.

Apparently, in certain cases in Cook County arising out of these offenses, judges have signed orders which provide for different dispositions of the fines and fees collected. The circuit clerk has asked whether she should distribute the amounts collected in accordance with the statute or the order entered in those cases.

The General Assembly has been granted the authority to define crimes and to establish the nature and extent of criminal penalties, and a court exceeds its authority if it orders a sentence other than that mandated by statute, unless the mandated penalty shocks the conscience of reasonable men. (People v. Wade (1987), 116 Ill. 2d 1, 6.) Thus, a trial court, upon determination of guilt, has no authority to assess a fine or impose a sentence other than that provided by statute. (People ex rel. Daley v. Suria (1986), 112 Ill. 2d 26, 38.) Further, the recovery of costs, which was unknown at common law, rests entirely upon statutes, which must be strictly construed. (In re W.W. (1983), 97 Ill. 2d 53, 55.) Therefore, the court may assess fines

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and costs in traffic cases, as in other cases, only in accordance with the applicable statutes.

Sections 27.5 and 27.6 provide, in part, that with respect to the offenses to which they are applicable, judges shall impose one total sum of money payable for the violations. The circuit clerk may add on no additional amounts except for amounts that are required by sections 27.3a (automated record keeping fee) and 27.3c (document storage fee) of the Clerks of Courts Act (705 ILCS 105/27.3a, 27.3c (West 1998)). Where a statute contains a provision relating to particular facts, it is operative as against the general provisions on the subject either in the same act or in the general laws relating thereto. (People ex rel. Goodman v. Wabash Ry. Co. (1947), 395 Ill. 520, 540.) Sections 27.5 and 27.6 of the Clerks of Courts Act are specific statutes that are applicable only to a limited class of offenses arising under the Illinois Vehicle Code and the Child Passenger Protection Act. Although the fines and costs which the court has assessed in the sample order which you have included with your letter would be properly imposed with respect to misdemeanor convictions generally, the specific provisions of sections 27.5 and 27.6 control over the more general provisions found in the Unified Code of Corrections (730 ILCS 5/1-1-1 et seq. (West 1998)) and elsewhere with respect to the offenses to which they apply.

In these cases, the final judgment order includes a total sum due for all fines, fees, costs, reimbursements, assessments and restitution, when applicable. The order for payment of this total sum of money is clearly within the jurisdiction of the court. That part of the judgment order purporting to direct the distribution of the fine and fees, however, is contrary to sections 27.5 and 27.6. Because defining penalties and directing their disposition is a legislative matter, the court is without jurisdiction to provide for a distribution different from the legislative scheme, and that part of the order so providing is invalid.

For the reasons stated, it is my opinion that, with respect to the cases to which sections 27.5 and 27.6 of the Clerks of Courts Act apply, the court must order the distribution of the fees, fines, costs, penalties, bail balances assessed or forfeited and any other amount paid by a person to the circuit clerk in accordance with the requirements of those sections. To the extent that an order purports to direct an alternative distribution, that order is invalid.


My conclusion that an order which deviates from the statutory requirements is invalid does not, however, resolve the issue of whether the circuit clerk should comply with the order or may disregard the order and distribute the fees, fines and costs as provided by statute. Ordinarily, of course, a circuit

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clerk is obligated to execute the lawful orders entered by a judge of the circuit court, and may not elect to disregard an order because he or she believes that it is improper.

In these circumstances, it appears that the problem may be resolved without requiring the clerk to make such an election. According to the materials at my disposal, the problem apparently has arisen from the unintentional submission of erroneous orders which were, in turn, signed routinely by the court without any intent to deviate from the applicable statutes. Consequently, avoiding repetition of these problems is simply a matter of ensuring that the orders prepared and submitted to the court in these cases reflect the proper statutory disposition formula. With respect to erroneous orders previously entered, a motion to amend the orders to conform to statute may be appropriate.

Sincerely,


JAMES E. RYAN
ATTORNEY GENERAL