

STATE OF TENNESSEE
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December 15, 2005

Opinion No. 05-179

Jail Fee

QUESTION

Should the jail fee referenced in Public Chapter 504, passed on May 28, 2005, be considered part of an offender's DUI punishment and assessed at disposition?

OPINION

The jail fee mentioned in Public Chapter 504 is not part of the punishment for violation of Tenn. Code Ann. §55-10-401, DUI first offense. Because the fee is a reimbursement to be imposed on a per diem basis, it must be assessed at the end of the three-day confinement period.

ANALYSIS

Public Chapter 504, which takes effect January 1, 2006, amends Tenn. Code Ann. § 55-10-403 by adding a new subsection (s) that provides, in relevant part, as follows:

(2) A court sentencing an offender, pursuant to either subdivision (s)(1) (A) [offenders less than twenty-one years of age at the time of the offense] or (B) [offenders twenty-one years of age or more at the time of the offense] shall order such offender to remove litter from public highways for a period of eight (8) consecutive hours a day for three (3) days. *Each of such three (3) days shall be considered confinement for purpose of application and payment of the fees set forth in §8-26-105(a) [jailers' fees].*

Tenn. Code Ann. § 55-10-403(s)(2) (as amended, effective Jan. 1, 2006) (emphasis added).

Brown v. Knox County, 39 S.W.3d 585 (Tenn. Ct. App. 2001), answers the question whether the fees referenced in the italicized sentence are to be considered part of an offender's punishment. In that case, the court revisited the issue, decided earlier in *Knox County v. City of Knoxville*, No. 759, 1988 WL 116456 (Tenn. Ct. App. Nov. 2, 1988), to explain "the interplay of two statutes," *i.e.*, the DUI statute, Tenn. Code Ann. §55-10-403(a), and the general jailers' statute, Tenn. Code Ann. §8-26-105. The Court of Appeals held that DUI offenders must pay both the jail fees pursuant to Tenn. Code Ann. § 8-26-105 and the fine for drunk driving pursuant to Tenn. Code Ann. § 55-10-

403. *Brown*, 39 S.W.3d at 587-89. Thus, the jail fee referred to in subsection (s) of the amendment is not part of the punishment for DUI first offense.

Because the jailers' fee is not part of the punishment for DUI first offense but, rather, is a fee to reimburse county jailers on a per diem basis, the fee is taxed separately from the general bill of costs in criminal cases and assessed after the costs have accrued. *See Op. Tenn. Att'y Gen. Nos. 84-307, 84-290, 02-095, 03-106* (attached). Accordingly, the jail fee is not to be assessed at disposition.¹ Rather, the reimbursement should be assessed at the end of the three-day confinement based upon the per diem allowance set by the county legislative body or governing body as provided by Tenn. Code Ann. § 8-26-105.

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¹Disposition is the time of conviction. *See* Tenn. Code Ann. §40-11-138(b) (defining a "disposition" under the bail provision dealing with release of bail bondsmen or sureties from obligations, as, in relevant part, a "conviction").