



# Supreme Court of Wisconsin

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Director of State Courts

October 27, 2008

Hon. J. B. Van Hollen  
Attorney General  
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RE: Municipal court fees for warrants and commitment orders

Dear Attorney General Van Hollen:

I am requesting guidance from your office on whether Wisconsin law permits a municipality to charge a fee for warrants and commitment orders issued by the municipal court and/or served by local law enforcement. This issue has arisen in the Mid-Moraine Municipal Court, a joint court formed under Wis. Stats. §755.01(4) to serve thirteen municipalities in Washington and Ozaukee counties, but it is applicable to municipal courts statewide.

There are two questions presented: (1) May a municipal court charge a fee for issuing an arrest warrant or commitment order, taxable as a cost to the defendant, with the proceeds to be retained by the court? (2) May a municipality charge a fee for issuing or serving a warrant or commitment order, taxable as a cost to the defendant, payable to the municipality to offset the costs of service by law enforcement?

DEPT. JUSTICE (1) **Can a municipal court impose a court fee for issuing a warrant or commitment order?**

73.11.13.143.22 The Mid-Moraine Municipal Court for many years has charged a \$25 "warrant fee" each time an arrest warrant or commitment order is issued by the court, generally for defendants who have failed to pay the judgments against them, as provided by §800.095. This fee is taxed as costs and added to the judgment; the money is collected and retained by the court. Collection of the fee was initiated by the predecessor of the current judge; there does not appear to be any ordinance requiring it. The Mid-Moraine municipalities are now circulating a joint ordinance, to be adopted by each municipality, that would institutionalize this fee.

There appears to be general agreement that a municipal court's authority to impose fees derives from state law and cannot be enlarged by municipal ordinance. With respect to the circuit courts,

my office has taken the position that courts may charge only those fees allowed by statute.<sup>1</sup> My office has consulted with members of the municipal judges' benchbook committee, who agree that municipal courts may not charge court fees for issuing warrants and commitment orders, and recent municipal judge education programs have said the same. I am attaching a letter from Eric Eberhardt, City Attorney for Port Washington, who appears to concur with this view.

The question then is whether there is any statute that allows the municipal court to charge such a fee. Some of the municipalities have argued that the statute providing municipal court costs of \$15 - \$28 per case provides the statutory basis for the court to add this amount each time a summons or warrant is issued. The argument is that the court can charge for each of the actions listed below:

§814.65 Fees of the municipal court. (1) Court costs. In a municipal court action, ... the municipal judge shall collect a fee of not less than \$15 nor more than \$28 on each separate matter, whether it is on default of appearance, a plea of guilty or no contest, on issuance of a warrant or summons, or the action is tried as a contested matter. Of each fee received by the judge under this subsection, the municipal treasurer shall pay monthly \$5 to the secretary of administration for deposit in the general fund and shall retain the balance for the use of the municipality.

The municipal judges consulted strongly disagree with this reading of the statute. They see this section as the fee charged by the court for filing the action, the equivalent of the circuit court filing fee provided in §814.63(1)(b). They argue that this list is jurisdictional in nature and enumerates the ways in which a case might come before the court, not the number of times a fee can be charged. I believe this view is correct and reflects the practice of how municipal court fees in fact are charged. If this statute does not apply, I see no statute that allows the court to impose a fee, retained by the court, for issuing a warrant.

**(2) Can a municipality impose a law enforcement fee for issuing or serving a warrant or commitment order?**

The joint ordinance also includes an additional \$25 fee, applicable to all warrants or commitment orders issued by the court, which would go to the municipal treasurer to offset the law enforcement costs of serving the warrant.

\_\_\_\_\_ Service Fees. Pursuant to the provisions of Section 814.70, 814.705, and 814.71 of Wis. Stats., on behalf of "Municipality Name", the Mid-Moraine Municipal Court, of which the municipality is a member of, shall charge a \$50 warrant and commitment order service fee for all warrants issued. Upon the Municipal Court's receipt of payment, the

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<sup>1</sup> Consistent with advice we have received from your office, we have advised circuit court clerks and judges that the only fees that may be collected by the court are those supported by statute, and the county board may not authorize additional fees for the clerk of court. See Director of State Courts Administrative Bulletin 04-07, citing 80 Op. Att'y Gen. 223 (1992). My office has also advised circuit court clerks that there is no such thing as a "warrant fee" that goes to the court for simply issuing a warrant. (The \$5 fee in §814.61(5) is for filing tax warrants, which is clear from the context.)

“Municipality Name” shall receive \$25.00 of the fee and the Mid-Moraine Municipal Court shall receive \$25.00 of the fee.

The municipal attorneys argue that this ordinance is supported by the following statutes:

§800.10 Fees and costs in municipal court. (1) Fees and costs in municipal court are prescribed in s. 814.65.

§814.65 Fees of the municipal court. (4) Taxation of fees and costs.

(a) Other than fees specified in sub. (1) and costs specified in par. (b), no fees or costs are taxable by a municipality to a party before a municipal court unless it is directly chargeable to the municipality as a disbursement, such as service of process costs.

(b) If service of process is accomplished by municipal personnel, the cost of the service prescribed under ss. 814.70 and 814.71, subject to any modification applicable under s. 814.705, is taxable regardless of whether a separate disbursement is made to specifically reimburse the municipal employee or agency.

§814.70 Fees of sheriffs. The sheriff shall collect the fees under this section. The fees are set as follows, unless a higher fee is established under s. 814.705:

(1) Service of process. For each service or attempted service of a summons or any other process for commencement of an action, a writ, an order of injunction, a subpoena, or any other order, \$12 for each defendant or person....

§814.705 Governing body may establish higher fees. (1) With respect to fees enumerated in s. 814.70 (1), (2), (3) (a) and (b), (4) (a) and (b), and (8), [county, city, village and town boards may establish higher fees for their law enforcement officers].

§814.71 Fees of city police, constables and village marshals. City police, constables and village marshals shall collect the same fees as those prescribed for sheriffs in s. 814.70 for similar services subject to any modification applicable under s. 814.705.

Although the proposed ordinance is entitled “Service Fees”, it is imposed for all warrants issued. That aspect of the ordinance does not appear to be supported by the statutes cited as justification, which are imposed for “service or attempted service” or “service if accomplished”. Since this problem is easily corrected, I would like your opinion on the validity of the ordinance either way.<sup>2</sup>

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<sup>2</sup> Until it adopted the joint ordinance, the City of Hartford (a member of the Mid-Moraine Municipal Court) had an ordinance authorizing a \$25 fee for warrants and commitment orders served by law enforcement, modeled after §§814.70-71, taxable as costs to the defendant and deposited to the municipal general fund. Former Hartford Ordinance 42.04(1) provided:

Warrant Service Fees. Pursuant to the provisions of Section 814.70, 814.705 and 814.71 of Wis. Stats. the Police Department shall charge a warrant service fee of \$25.00 when the Department serves a warrant or commitment order upon an individual, which fee shall be deposited in the City’s general fund. If the individual has warrants from multiple municipalities a warrant fee shall be assessed for each municipality. The individual shall be responsible for the payment of the warrant service fee. (Created 1/23/07—Ord. # 1136)

Regardless of whether the law enforcement fee is imposed for issuing the warrant or for serving it, the municipal judges that my office has consulted do not believe that a warrant or commitment fee can be taxed to a defendant under the municipal court costs statute, §814.65. Their view is that warrants and commitment orders aren't "served" on a person or returned to the court; they are orders to law enforcement. The municipal judges read the statutes as follows:

- Under § 814.65(4)(a), a municipal court can impose a warrant fee only if it falls within the class of "fees or costs" that are "directly chargeable to the municipality as a disbursement, such as service of process costs."
- "Service of process", as generally understood and as used by §800.095(3), consists of delivering a paper designed to give a person notice of an action against them. Warrants under §800.02(5) and commitment orders under §800.095(4) and (6) are addressed to a law enforcement officer, whose job is not to deliver the warrant but to pick up the person. Law enforcement is obeying a court order, not serving process.
- §968.04(4), which says that a warrant is served by arresting the defendant, applies only in criminal cases and not in municipal court. The criminal costs statute is quite dissimilar from the language of the municipal court costs statute.
- The appellate and supreme court opinions in *State v. Dismuke*, 2001 WI 75 ¶25 and 2000 WI App 198 ¶8, hold that fees and disbursements are taxable to the defendant only if they are "ordinarily charged to and payable by another" rather than merely "internal operating expenses of a governmental unit." Most municipalities are not charged a fee by outside law enforcement for picking someone up on a warrant, and they don't send a bill when the police pick up a defendant on a warrant from another jurisdiction.
- Since the key phrases in §814.65(4) are not defined – "service of process" and "directly chargeable to the municipality as a disbursement" – the court should err on the side of not charging. Alternatively, the terms are clear enough to rule out taxing this cost.

There is also an alternative view that "service of process" is a broad enough term to include warrants and commitment orders in municipal court cases.<sup>3</sup> That argument is as follows:

- §814.70(3) covers travel costs for "serving any summons, writ or other process, except criminal warrants". §814.70(4) covers travel costs for "any criminal process", as if addressing what was excluded in (3). The basic service of process fee is \$12, but the county board can set a higher fee. §814.705.
- §814.71 provides that local law enforcement "shall collect the same fees as those prescribed for sheriffs in §814.70 for similar services", suggesting that if the sheriff can charge it, then the police chief can too. Localities may also set their fee higher than \$12.
- Under §814.65(4)(b), a municipal court may impose this fee when service of process is accomplished by municipal personnel.

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<sup>3</sup> My office has advised that the circuit courts may tax such a fee as costs for the sheriff under §814.70. The Records Management Committee has included the sheriff's service fee on the form for writ of commitment (GF-148), and the clerks of circuit court have been advised that they may pursue collection on behalf of the sheriff. In criminal cases, §968.04(4) says that a warrant is "served" by arresting the defendant and informing them of the charges. It specifies that the officer may add the officer's fees and mileage.

- The *Dismuke* opinions say that if an order to produce the defendant for trial constitutes “service of process”, then it can be added on to the judgment as a cost. The court of appeals concluded that such an order was “service of process” for purposes of §814.70, while the supreme court felt the record was too confusing to decide.

Given these competing views, I would like to know whether your office believes that a municipality can charge a fee under any of these circumstances.

Thank you for your assistance with this matter. If you need further information, please contact Marcia Vandercook, 267-7335.

Sincerely,



A. John Voelker  
Director of State Courts

AJV/MV/lai  
Enc.

cc: Sheryl Gervasi, Office of Court Operations  
Karla Baumgartner, Office of Judicial Education  
Municipal Judge John Grundahl  
Chief Judge Mac Davis