

IN THE CIRCUIT COURT OF _____ COUNTY, MISSOURI
____ JUDICIAL CIRCUIT

MUNICIPAL DIVISION – _____

**SUA SPONTE ORDER REGARDING SURCHARGE
FOR SHERIFFS' RETIREMENT FUND**

Effective Date – August 28, 2013

Background

On July 8th, 2013, the _____ Municipal Court received a directive from the Office of State Courts Administrator (“OSCA”) to begin assessment on August 28, 2013, in every case disposed of by a plea of guilty or a finding of guilty, an additional surcharge of three dollars for the “Sheriffs’ Retirement Fund.”

The authority cited for OSCA’s directive arises from Opinion 20-2013, dated April 17, 2013, written by Chris Koster, Attorney General of the State of Missouri (*hereinafter* Opinion 20-2013)¹.

Mr. Koster’s Opinion interprets Section 57.955 RSMo (relating to the retirement fund of county sheriffs), which statute has been in effect in its present wording since 1996. In Section 1 of that statute, it is written “[t]here shall be assessed and collected a surcharge of three dollars in all civil actions filed in the courts of this state.” Section 57.955.1 RSMo.

Opinion 20-2013 concludes that Section 57.955 RSMo is authority for the requirement of an assessment of a three dollar surcharge, not only in the circuit divisions, but also in the municipal divisions, for the Sheriffs’ Retirement Fund, since, according to the Attorney General, Missouri municipal court cases are considered by law “civil actions.”

The Attorney General noted that an earlier version of the subject statute specifically excepted assessment of the surcharge in the municipal divisions, but that in 1996, that exception was eliminated by legislation. The Attorney General then opined that since the above-referenced statute change removed the exception of the municipal divisions from the surcharge, the amendment to the statute must have some meaning. Therefore, the Attorney General wrote, municipal court clerks “must collect the surcharge in municipal ordinance violation cases.”

This Court has become aware that the Clerk of the Missouri Supreme Court is in agreement with the opinion of the Attorney General expressed in Opinion 20-2013, and, as a result, ordered OSCA to notify the municipal divisions that the Sheriffs’ Retirement Fund surcharge is to be assessed in all municipal court judgments.

Discussion

An Attorney General’s opinion can be entitled to no more weight than “that given the opinion of any other competent attorney.” *Gershman Investment Corporation v. Danforth*, 517 S.W.2d, 33, 36 (Mo. banc 1974).

The Attorney General is charged by Missouri law (Section 27.060 RSMo) to defend the statutes of the State of Missouri, including Section 57.955 RSMo. The Attorney General has no authority to declare a statute unconstitutional. *Gershman*, 517 S.W.2d at 35.

Opinion 20-2013 contains a footnote, which reads as follows: “We do not address the constitutionality of collecting this surcharge at all.” Opinion 20-2013 (citing *Harrison v. Monroe County*, 716 S.W.2d 263, (Mo.banc 1986) (Welliver, J., concurring).

¹ Attorney General’s Opinion 20-2013 is available at: http://ago.mo.gov/opinions/2013/020_2013.pdf.

Harrison has never been overruled and it is therefore still the law in Missouri. That case concerned a new Senate bill which imposed an additional surcharge in civil cases. The bill provided for additional compensation for certain county officials through the surcharge, which was added to court costs. The Court ruled that this additional compensation constituted a “sale of justice” in violation of Article I, §14 of the Missouri Constitution. *See Harrison v. Monroe County*, 716 S.W.2d 263 (Mo. banc. 1986) (Welliver, J., concurring).

The *Harrison* Court stated that the “constitutional proscription against the sale of justice extends to guarantee access to the courts without a requirement of payment of unreasonable charges.” *Id.* at 267. The Court then opined that the “proper test is whether the court costs required are reasonably related to the expense of the administration of justice.” *Id.* at 267.

It is this test that the _____ Municipal Court must consider.

In *Harrison*, the Court found that the subject required court costs “bear no reasonable relationship to the expenses of the administration of justice”, and instead, the costs in the Senate bill under review in that case “are collected to enhance the compensation of officials of the executive department of the county government.” *Id.* The Court then ruled that these surcharges were “unreasonable impediments to access to justice in violation of art. I, §14.” *Id.*

In his concurring opinion in *Harrison*, Judge Welliver wrote that “retirement funds of public officials” are one of those “public uses” which “clearly should not have to rely upon the generation of funds through a user tax based on persons seeking their constitutional right of access to the courts.” *Id.* at 270.

This Court is required to follow the Rules contained in the Canons of the Code of Judicial Conduct, including the following:

Rule 2-1.1, states: “A judge shall comply with the law, including the Code of Judicial Conduct.”

Rule 2-2.2, states: “A judge shall uphold and apply the law....”

Rule 2.03 defines the word “Law”: “Law encompasses court rules as well as ordinances, administrative regulations, statutes, constitutional provisions and decisional law.”

In addition to the above-referenced constitutional provision, this Court may consider decisional law, including decisions regarding assessment of court costs. The assessment of court costs rests entirely on statutory provisions. Such statutes are penal in their nature, and therefore must be strictly construed. *See Cramer v. Smith*, 168 S.W.2d 1039 (Mo. 1943). This Court may then consider this new surcharge under the strict construction standard.²

It cannot be seriously argued that the duties of the 114 sheriffs³ of this State include services to the municipal courts of the State. Sheriffs are county employees. They have no connection whatsoever to municipal court

²There are a number of surcharges (part of “court costs” as defined in Section 488.010(1) RSMo) which municipal courts must by statutory mandate collect, or if authorized by city ordinance, may collect. All of these surcharges (Domestic Violence Shelter, Section 488.607 RSMo; Inmate Security Fund, Section 488.5026 RSMo; POST, Section 488.5336 RSMo, and Crime Victim Compensation, Section 488.5339.1 RSMo) are authorized by specific reference in each such statute to apply to municipal ordinance violations. The Sheriffs’ Retirement Fund surcharge, Section 488.024 RSMo (same as Section 57.955 RSMo), does not make any reference that it applies to municipal ordinance violations. It is also noteworthy that the surcharge for Crime Victim Compensation, referenced above, and for the Domestic Violence Shelter, also referenced above, are to be collected in “criminal” cases, which each Section states, include municipal ordinance violations. The legislature therefore considers a municipal ordinance violation as a “criminal” case for purposes of these two surcharges. The Attorney General did not reference these surcharge statutes in his Opinion, concluding instead that municipal ordinance violations are “civil” cases.

³The beneficiaries of the Sheriffs’ Retirement Fund are solely retired sheriffs, and their surviving spouses, not retired deputy sheriffs.

administration. Assessing municipal court defendants with a surcharge to fund a retirement plan for county sheriffs, or for their surviving spouses, fails the test set out in *Harrison*. The surcharge for the Sheriffs' Retirement Fund is not "reasonably related" to the "expenses of the administration of justice" of the _____ Municipal Court.

Defendants in the _____ Municipal Court, if found guilty, or plead guilty, would be faced with paying an extra three dollars per charge, which money is payable to a retirement fund for persons who have no relationship whatsoever to the administration of justice in _____ Municipal Court.

This Court is obligated to follow the *Harrison* case, the Missouri Constitution and the Judicial Canons.

This Court finds that the imposition of the Sheriffs' Retirement Fund surcharge in the _____ Municipal Court would entail a sale of justice by the judges of this Court. Such surcharge would result in an unreasonable impediment to a defendant's access to justice in violation of Article I §14 of the Missouri Constitution. The Court would violate its duty to comply with the law if it assessed such a surcharge. Since the Court finds that such a surcharge is unconstitutional, it does not reach the issue of whether Section 57.955.1 RSMo was properly interpreted by the Attorney General to include assessment of the Sheriffs' Retirement Fund surcharge in municipal court cases. Even if the Attorney General's Opinion is correct, the surcharge itself is unconstitutional. Further, this Court need not examine whether the subject surcharge passes the "strict construction" test for the same reason.

Order Sua Sponte

The Court Administrator and Deputy Court Administrators are hereby ordered not to assess nor collect a Sheriffs' Retirement Fund surcharge on any case adjudicated in this Court, until further notice by this Court or until a ruling to the contrary by a higher court.

Dated this _____ day of _____, 2013.

So Ordered:

Judge