



Lynn Fitch
ATTORNEY GENERAL
OPINIONS

June 26, 2020

Honorable David F. Delgado
Southaven Municipal Court Judge
8889 Northwest Drive
Southaven, Mississippi 38671

Re: Fees for Expungement

Dear Judge Delgado:

The Office of the Attorney General is in receipt of your request for the issuance of an official opinion.

Questions Presented

May a municipal court charge a filing fee for the expungement of criminal matters pursuant to Miss. Code Ann. Section 21-23-7(11), which empowers the municipal court to impose reasonable costs of court for “any other item of court cost” in the amount of fifty dollars (\$50.00)?

If yes, may a municipal court charge this additional fee pursuant to Section 21-23-7(11) for an expungement to which a defendant is entitled by law, such as when a criminal case is dismissed or a defendant is acquitted?

Background Facts

It is our understanding, the Southaven Municipal Court assesses a fifty dollar (\$50.00) filing fee, classified as “any other item of court cost” pursuant to 21-23-7(11), based upon the filing of a new petition (for expungement) in the same case.

Brief Response

The court may not assess a filing fee for an expungement or any filing before the court pursuant to Section 21-23-7(11). Thus, the municipal court may not impose a charge as “any other item of court cost” in the amount of fifty dollars (\$50.00).

Applicable Law and Discussion

Section 21-23-7(11) states, in relevant part:

The municipal court shall have the power to impose punishment of a fine of not more than One Thousand Dollars (\$1,000.00) or six (6) months imprisonment, or both, for contempt of court. The municipal court may have the power to impose reasonable costs of court, not in excess of the following:

* * *

Any other item of court cost \$50.00

No filing fee or such cost shall be imposed for the bringing of an action in municipal court.

(Emphasis added). Filing fees are impermissible in municipal court. Accordingly, the court may not assess a fee for an expungement or any filing before the court by classifying it as “any other item of court cost.”

Our response to your first question has rendered your second question moot. However, in criminal cases wherein the statute(s)¹ require expungement based upon a defendant’s acquittal or dismissal, the court may not assess any fines or fees to the defendant. Article 14 Section 261 of the Mississippi Constitution of 1980 states:

The expenses of criminal prosecutions shall be borne by the county in which such prosecution shall be begun; and all fines and forfeitures shall be paid into the treasury of such county. Defendants, in cases of conviction, may be taxed with the costs.

(Emphasis added). Section 261 clearly states the county bears the cost of prosecution unless the defendant is convicted. Therefore, when a defendant is acquitted, or the case is dismissed and a conviction has not been obtained, the court may not charge the defendant any fees or fines associated with the case.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Kim P. Turner*

Kim P. Turner
Assistant Attorney General

¹i.e., Sections 99-15-26(5), 99-19-71(4) and 21-23-7(13)