



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

July 20, 2023

The Honorable Trent L. Howell
Justice Court Judge, Yalobusha County
Post Office Box 947
Water Valley, Mississippi 38965

Re: Fees and Court Costs When Charges Dropped in Justice Court

Dear Judge Howell:

The Office of the Attorney General has received your request for an official opinion.

Question Presented

When it comes to what fee may be charged when a complaining party wants to drop misdemeanor charges he has filed against a defendant in justice court, how does one reconcile Mississippi Code Annotated Section 25-7-25(2) and Section 99-15-51 as they relate to a “drop charge fee” and/or court costs, and who should pay?

Brief Response

Upon expungement or dismissal of any criminal affidavit, complaint, or charge in justice court, the justice court may impose a fee not exceeding \$50.00 pursuant to Section 25-7-25(2). Additionally, in the case of a petty misdemeanor, justice courts may require payment of court costs when proceedings are dismissed pursuant to Section 99-15-51. Neither statute dictates who should pay.

Applicable Law and Discussion

Section 25-7-25(2) states, “[t]he justice court shall have the power to impose a fee not to exceed Fifty Dollars (\$50.00) for an expungement or dismissal of any criminal affidavit, complaint or charge.”¹ We have previously said that this provision authorizes the justice court, “to collect a fee not exceeding \$50.00 from the individual filing the affidavit or bringing the charge,” when that

¹ Subsection (2) of Section 25-7-25 was added by amendment in 2005, so any opinions issued before then may not be applicable.

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individual drops such charges. MS AG Op., *Branch* at *1 (Sept. 19, 2008). We note, however, that Section 25-7-25(2) does not specify the party against whom the fee must be assessed.

In addition to the fee authorized by Section 25-7-25(2), justice courts may require a payment of court costs when proceedings are dismissed pursuant to Section 99-15-51, which provides:

In prosecutions for petty misdemeanors, if the party injured appear before the court where the same shall be pending and acknowledge to have received satisfaction, on motion of the prosecuting attorney the court, if it shall adjudge that the ends of justice will be conserved thereby, may discharge the defendant and dismiss the proceedings and may require the payment of court costs.

This office has previously stated that Section 99-15-51 authorizes a judge to require the defendant to pay court costs for a petty misdemeanor case that is dismissed at the request of the “party injured” on a motion of the prosecuting attorney. MS AG Op., *Pacific* at *1 (Nov. 25, 1998). However, like Section 25-7-25(2), Section 99-15-51 does not dictate the party responsible for court costs.

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/ Abigail C. Overby

Abigail C. Overby
Special Assistant Attorney General