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DEPARTMENT OF JUSTICE

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Mr. A. John Voelker
Director of State Courts
16 East, State Capitol
Madison, WI 53702

Dear Mr. Voelker:

¶ 1. You indicate that for many years a $25 "warrant fee" has been charged each time that an arrest warrant or commitment order has been issued by a particular municipal court. The term "commitment order" apparently refers to an order for incarceration of a defendant in a municipal court proceeding. *See, e.g.*, Wis. Stat. § 800.095(4)(b)1. Such a fee has most commonly been charged when a warrant has been issued for a defendant who has failed to pay a municipal court judgment. *See, e.g.*, Wis. Stat. § 800.095(1) and (2). The municipal court has been requested to tax each such fee as a cost in proceedings in that court.

¶ 2. All funds derived from the imposition of these fees have been retained by the municipal court. Initially, no municipal ordinance imposed these fees. Enactment of a municipal ordinance or ordinances expressly authorizing the imposition of these fees apparently has occurred or is imminent.

¶ 3. You also indicate that, in addition to the $25 "warrant fee," a municipal ordinance or ordinances has imposed a separate $25 charge to offset law enforcement or other municipal costs associated with the issuance of each arrest warrant or commitment order by this municipal court. This separate charge has been imposed by municipal ordinance regardless of whether service of the arrest warrant or commitment order was ever attempted and regardless of whether the arrest warrant or commitment order was ever successfully served or executed. The municipal court has been requested to tax each such separate charge as a cost against the defendant in proceedings in that court.

¶ 4. Some or all of the funds derived from the imposition of these separate charges have been retained by the municipal court. Enactment of a municipal ordinance or ordinances changing this separate charge to one for actual service of each warrant or commitment order issued by the municipal court apparently has occurred or is imminent.

QUESTIONS PRESENTED AND BRIEF ANSWERS

¶ 5. You request my legal opinion concerning two questions:

1. Under Wis. Stat. § 814.65(1), does a municipal court or judge have statutory authority to charge a fee that is taxable as a cost against a defendant, with the proceeds to be retained by the municipal court, for each arrest warrant or a commitment order that is issued by the municipal court in a single legal action?

¶ 6. In my opinion, the answer is no. In each legal action, a municipal judge must charge only one fee of between $15 and $28. The municipal treasurer must remit $5 of that fee to the Secretary of the Department of Administration ("DOA"). The balance is to be retained by the municipality itself and not by the municipal court. Only one such fee may be charged in each legal action that comes before the municipal court for final disposition, regardless of how many warrants or commitment orders are issued in that action. Because only one such fee may be charged, only one such fee may be taxed as a cost against a defendant in municipal court.

2. In order to defray law enforcement or other municipal costs, does a municipality have statutory authority to impose a charge separate from the fee to be collected by the municipal judge under Wis. Stat. § 814.65(1) that can be taxed as a cost against a municipal court defendant and that is payable to the municipal plaintiff either for the issuance of each warrant or commitment order by its municipal court in a single legal action or for service by its municipal personnel of each warrant or commitment order issued by its municipal court in a single legal action?

¶ 7. In my opinion, a municipal plaintiff may not impose a charge separate from the fee to be collected by the municipal judge under Wis. Stat. § 814.65(1) in order to defray law enforcement or other municipal costs associated with the issuance of any warrant or commitment order by its municipal court. Because no such charge can be imposed, a municipal court may not permit a municipal plaintiff to tax such a charge as a cost against a defendant. Under Wis. Stat. § 814.65(4)(b), a municipal court may allow a municipal plaintiff to tax costs against a defendant in municipal court for actual service or execution by its municipal personnel of each warrant or commitment order issued by its municipal court in a single legal action. Taxable costs for such service or execution by personnel of the municipal plaintiff may not exceed $12, unless a higher amount was established by the governing body of the municipality prior to the time that service or execution occurred.

ANALYSIS

¶ 8. Your first question is whether a municipal court or judge may charge a separate fee each time that it issues an arrest warrant or commitment order in a single legal action. The operation of the state court system is a "state responsibility of statewide importance." *See Flynn*

v. Department of Administration, 216 Wis. 2d 521, 535, 576 N.W.2d 245 (1998). "Since compensation is not indispensable to a public office, any right which a clerk has to compensation for services performed, whether by way of salary or fees, must be found in some constitutional or statutory provision." 15A Am. Jur. 2d *Clerks of Court* § 11 (footnotes omitted). A clerk of a court "may be required to perform gratuitously or without charge those services for which no compensation is fixed by law[.]" *Id.* (footnote omitted). *See also* 80 Op. Att'y Gen. 223, 223-24 (1992).

¶ 9. Wisconsin Stat. § 814.65(1) specifies that "[i]n 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." Wisconsin Stat. § 814.65(1) does not authorize a municipal judge or the clerk of a municipal court to collect or impose a fee of less than $15 or to collect or impose a fee of more than $28.

¶ 10. Whether a fee may be collected under Wis. Stat. § 814.65(1) each time that a warrant or commitment order is issued by a municipal court in a single legal action depends upon the meaning of the phrase "each separate matter" in that statute. Statutory interpretation "'begins with the language of the statute.'" *State ex rel. Kalal v. Circuit Court*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110 (citation omitted). Statutory language must be construed in the context in which it is used, not in isolation but as part of a whole, in relation to the language of surrounding or closely related statutes. *Kalal*, 271 Wis. 2d 633, ¶ 46.

¶ 11. *Black's Law Dictionary* 999 (8th Ed. 2004) defines "matter" as: "**1.** A subject under consideration, esp. involving a dispute or litigation; CASE . . . . " The term "matter" is commonly used to describe an "action" in a particular court. *See, e.g., State v. Ndina*, 2009 WI 21, ¶ 92, 315 Wis. 2d 653, 761 N.W.2d 612.

¶ 12. Related statutes also indicate that the phrase "each separate matter" in Wis. Stat. § 814.65(1) refers to the final disposition of a single legal action in municipal court. In criminal and forfeiture matters, a single fee is collected by the clerk of circuit court upon final disposition of the action. *See* Wis. Stat. § 814.60(1) ($20 in a criminal action "when judgment is entered against the defendant"); Wis. Stat. § 814.63(1)(b) ($25 in a forfeiture action "when judgment is entered against the defendant").

¶ 13. In most civil matters, a single fee is collected by the clerk of court when an action is commenced in that court. *See* Wis. Stat. § 814.61(1)(a) (ordinary civil action); Wis. Stat. § 814.62(3)(a) (small claims action). A portion of the fee collected by the clerk of court in connection with the commencement of an action must be paid to the Secretary of DOA to defray costs incurred by the State in connection with the operation of the state court system. *See, e.g.*, Wis. Stat. § 814.61(1)(a) ($45 in an ordinary civil action); Wis. Stat. § 814.63(2)(d)2. ($11.80 in a small claims action). At one time, the portion of the fee that was required to be paid to the State

was called the "suit tax." *See, e.g.*, Wis. Stat. § 814.21(4) (1977). Wisconsin Stat. § 814.65(1) requires payment of $5 to the Secretary of DOA "for deposit in the general fund" in the same manner as did the former suit tax.

¶ 14. Historically, Wisconsin statutes have not required that a suit tax or similar fee be paid to the State or to the clerk of court in connection with separate items that come before a particular court in a single legal action prior to its final disposition. *See, e.g.*, *Fortier v. Flambeau Plastics Co.*, 164 Wis. 2d 639, 682, 476 N.W.2d 593 (Ct. App. 1991): "Those sections [of the statutes] provide that a filing fee shall be paid at 'the' commencement of an action. An action need only be commenced once. The plaintiff need only pay the filing fee once. Nothing in the statutes suggests that the filing fee be collected for each defendant named or added in an action." The language employed in Wis. Stat. § 814.65(1) contains no evidence of a conscious legislative decision to depart from the long-established practice that only one suit tax or filing fee be paid.

¶ 15. In my opinion, the phrase "each separate matter" in Wis. Stat. § 814.65(1) refers to the various methods in which a single legal action can come before a municipal court for final disposition. The fee authorized by Wis. Stat. § 814.65(1) is therefore a fee that can be charged only once in a municipal court action, regardless of how many warrants or commitment orders are issued in the action prior to its final disposition. Because only one such fee may be charged, a municipal court may allow a municipal plaintiff to tax only one such fee as a cost against a defendant in municipal court.

¶ 16. Your second question is whether a municipality has statutory authority to impose a charge separate from the fee to be collected by the municipal judge under Wis. Stat. § 814.65(1) that can be taxed as a cost to a municipal court defendant and that is payable to the municipal plaintiff either for the issuance of each warrant or commitment order by its municipal court in a single legal action or for service by its municipal personnel of each warrant or commitment order issued by its municipal court in a single legal action.

¶ 17. The "issuance of a warrant or summons" language in Wis. Stat. § 814.65(1) refers to the fee to be collected by the "municipal judge." That provision does not authorize the municipality itself to impose any other separate charge in connection with the issuance of a warrant. By its plain language, Wis. Stat. § 814.65(4)(a) and (b) authorizes the taxation of costs only in connection with "service." A warrant or commitment order that is issued by a municipal court might never be served. Wisconsin Stat. § 814.65(4)(a) and (b) therefore contains no language authorizing the municipality itself to impose any separate charge in connection with the issuance of each individual warrant or commitment order by its municipal court. Because a municipality lacks statutory authority to impose any separate charge to defray law enforcement or other municipal costs associated with the issuance of each warrant or commitment order by its municipal court, a municipal court may not allow a municipal plaintiff to tax any such separate charge as a cost to a defendant in municipal court.

¶ 18. Wisconsin Stat. § 814.65(4)(a) does provide that "costs are taxable by a municipality" where they are "directly chargeable to the municipality as a disbursement, such as service of process costs." Disbursements are statutorily authorized expenses that are "ordinarily charged to and payable by another[.]" *State v. Dismuke*, 2001 WI 75, ¶ 22, 244 Wis. 2d 457, 628 N.W.2d 791. Lawful charges by the sheriff or law enforcement personnel of other municipalities under Wis. Stat. §§ 814.70 and 814.71, as modified by Wis. Stat. § 814.705, are disbursements. *See State v. Dismuke*, 244 Wis. 2d 457, ¶ 26; *State v. Dismuke*, 2000 WI App 198, ¶¶ 7, 12, 238 Wis. 2d 577, 617 N.W.2d 862, *rev'd for lack of an adequate record*, 244 Wis. 2d 457, ¶ 26. *See also* Wis. Stat. § 814.04. Such statutory charges by the sheriff or law enforcement personnel of other municipalities are taxable as costs to a defendant in municipal court.

¶ 19. Costs for service made by personnel of the municipal plaintiff are not disbursements because they are "internal operating expenses of a governmental unit." *State v. Dismuke*, 244 Wis. 2d 457, ¶ 22. Under Wis. Stat. § 814.65(4)(b), a municipal plaintiff can request a municipal court to tax internal costs incurred in connection with "service of process[.]" The term "process" has two different, well-established legal meanings:

> In its broadest sense, the term "process" comprehends all the acts *of the court* from the beginning of a proceeding to its end; in its narrower sense, it is the means of compelling the defendant to appear in court after the suing out of the original writ in a civil case and after indictment in a criminal case. *State ex rel. Walling v. Sullivan*, 245 Wis. 180, 189, 13 N.W.2d 550, 555 (1944).

Wells v. Waukesha Marine Bank, 135 Wis. 2d 519, 536-37, 401 N.W.2d 18 (Ct. App. 1986) (italics in original). *See also Varda v. General Motors Corp.*, 2001 WI App 89, ¶ 15, 242 Wis. 2d 756, 626 N.W.2d 346 (using the phrase "service of process" in the narrower sense to refer to "the means by which a lawsuit is instituted and . . . to attain personal jurisdiction over the person of the defendant") (citations omitted.)

¶ 20. In my opinion, the Legislature used the term "process" in Wis. Stat. § 814.65(4)(b) to refer to all orders issued by the municipal court. In *State v. Dismuke*, 238 Wis. 2d 577, ¶ 13, a case involving an issue similar to those you present, the court of appeals held that orders to produce a criminal defendant for trial constituted "criminal process[]" because they "were generated out of the criminal court[.]" The court of appeals also held that such orders constituted "process" within the meaning of Wis. Stat. § 814.70(1) because orders to produce a criminal defendant are "'other order[s]'" within the meaning of that statute. *State v. Dismuke*, 238 Wis. 2d 577, ¶ 13.

¶ 21. My conclusion that the Legislature intended the term "process" in Wis. Stat. § 814.65(4)(b) to refer to all orders issued by the municipal court is also supported by the cross reference to Wis. Stat. § 814.70. *See Kalal*, 271 Wis. 2d 633, ¶ 46. Wisconsin Stat. § 814.70(1)

is entitled "SERVICE OF PROCESS." Wisconsin Stat. § 814.70(1) authorizes the sheriff to charge for "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[.]**" If the Legislature had intended to limit the term "process" in Wis. Stat. § 814.65(4)(b) to certain kinds of court orders, it either would not have included the cross reference to Wis. Stat. § 814.70 or would have qualified that cross reference to make it clear that a more limited meaning was intended.

¶ 22. In *State v. Dismuke*, 244 Wis. 2d 457, ¶ 24, due to the lack of an adequate record, the supreme court simply "[a]ssum[ed] . . ." without deciding that "the execution of an order to produce constitutes 'service of process[.]'" In the court of appeals, Dismuke contended that personal service of an order to produce was not statutorily required. *See State v. Dismuke*, 238 Wis. 2d 577, ¶¶ 17-18. The court of appeals responded to that argument in two ways. It held that, in a criminal case, it is permissible for the sheriff to charge for service of any order issued by the court. *See State v. Dismuke*, 238 Wis. 2d 577, ¶ 13. The court of appeals also upheld the sheriff's decision to personally serve the warrant, reasoning that "it would be illogical to mail the service of an order to a warden when a sheriff's deputy is required to effectuate the court's order." *State v. Dismuke*, 238 Wis. 2d 577, ¶ 18. In reversing the court of appeals, the supreme court never reached the issue of whether service of an order to produce is statutorily required.

¶ 23. All court costs must be specifically authorized by statute. *State v. Dismuke*, 244 Wis. 2d 457, ¶ 19. Statutes awarding costs in municipal court proceedings are in derogation of the common law and therefore must be strictly construed. *City of Janesville v. Wiskia*, 97 Wis. 2d 473, 479, 293 N.W.2d 522 (1980); OAG 42-82 (July 20, 1982) (unpublished opinion), at 3-4, 1982 WL 188338. Wisconsin Stat. § 59.27(4), which prescribes the duties of the sheriff, requires the sheriff to "serve or execute all processes, writs, precepts and orders issued or made by lawful authority and delivered to the sheriff." Courts have long held that "[t]o 'execute process,' is to perform its mandate." *Andrews v. Keep*, 38 Ala. 315, 1862 WL 442, *2 (1862). *Accord Townsend, Arnold & Co. v. Kleckley*, 38 S.C.L. (4 Rich.) 206, 1850 WL 3078, *5 (1850) ("'To execute process,' is to do what the process commands . . . .").

¶ 24. Service of process normally involves delivery of a paper. *See* Wis. Stat. § 801.10. When interpreting statutory language, some courts have applied the distinction between service of process and execution of process. *See U.S. v. McDonald*, 26 F. Cas. 1074, 1075 (E.D. Wis. 1879) (No. 15,667); *Schuman, Kane, Felts & Everngam, Chartered v. Aluisi*, 668 A.2d 929, 933 (Md. 1995). *See also Steele v. City of Wichita*, 826 P.2d 1380, 1388-89 (Kan. 1992). In *Schneider v. Waukesha County*, 103 Wis. 266, 269, 79 N.W. 228 (1899), the court characterized "the difference in language [between 'serving process' and 'executing process'] as [im]material" for purposes of determining allowable sheriff's fees under what is now Wis. Stat. § 814.70(4), which authorizes fees "[f]or travel in serving any criminal process[.]" The "service of process" language contained in Wis. Stat. § 814.65(4)(b) is similar to the statutory language construed in *Schneider*. In light of the court's holding in *Schneider*, it is my opinion that the "service of process" language contained in Wis. Stat. § 814.65(4)(b) also encompasses the execution of

process. I therefore conclude that a municipal court may allow a municipal plaintiff to tax costs against a defendant in municipal court for actual service or execution by municipal personnel of each warrant or commitment order issued by its municipal court in a single legal action.

¶ 25. I briefly address two other statutory requirements. Wisconsin Stat. § 814.65(4)(b) authorizes the taxation of costs only when service "is accomplished[.]" The word "accomplished" means "**2 :** established beyond doubt or dispute <an *accomplished* fact>." *http://www.merriam-webster.com/dictionary/accomplished.* The statutory language therefore requires that service or execution actually be accomplished by the municipal plaintiff's personnel in order for a municipal court to allow a municipal plaintiff to tax service costs against a defendant. The dollar amount of taxable costs where service or execution is accomplished by municipal personnel is also limited. Wisconsin Stat. § 814.65(4)(b) provides that the fee schedule contained in Wis. Stat. § 814.71 is "subject to any modification applicable under s. 814.705[.]" Wisconsin Stat. § 814.70(1) provides that the statutory charge for service of an order issued in a civil action is $12. Under Wis. Stat. § 814.705, the governing body of the municipal plaintiff is authorized to establish a higher amount. In my opinion, any higher charge must have been established by the governing body of the municipal plaintiff prior to the time that service or execution by its municipal personnel occurred in order for a charge higher than $12 to be allowable as a cost against a defendant in municipal court.

CONCLUSION

¶ 26. I therefore conclude that under Wis. Stat. § 814.65(1) a municipal judge must charge only one fee of between $15 and $28 that is taxable as a cost to the defendant in conjunction with the final disposition of a municipal court action, regardless of how many warrants or commitment orders are issued in that action. A municipal court may not allow a municipal plaintiff to tax costs against a municipal court defendant in order to defray law enforcement or other municipal costs associated with the issuance of a warrant or commitment order by the municipal court. Under Wis. Stat. § 814.65(4)(b), a municipal court may allow a municipal plaintiff to tax costs against a defendant for actual service or execution by municipal personnel of each warrant or commitment order issued by the municipal court in a single legal action. Allowable taxable costs for such service or execution by personnel of the municipal plaintiff may not exceed $12, unless a higher amount was established by the governing body of the municipality prior to the time that service or execution occurred.

Sincerely,

J.B. Van Hollen
Attorney General

JBVH:FTC:cla