

E-CITATION FEE QUESTIONS AND ANSWERS

For your ease of reference, here's the Public Chapter: <http://state.tn.us/sos/acts/108/pub/pco750.pdf>

CHECK THIS PUBLICATION FREQUENTLY FOR UPDATES

1. **The legislation seems to allow us to charge the \$5 for *written* tickets, too. Is that right?**
Yes, you can charge the fee for *both written and electronic citations* if you have an ordinance from your city council that authorizes the charge. The intent of the legislation is to allow cities to recover costs of establishing an electronic system.
2. **An Officer writes citation with 3 charges on it. We can only charge 1 court cost so does this mean we charge 1 \$5.00 e-fee or an e-fee per charge?** Although it is not 100% clear, a consistent application of court costs as outlined in an Attorney General's opinion (relating to litigation tax at Tenn. Op. Atty. Gen. No. 99-056) would support one fee per citation, not per charge on the citation. The pertinent section of the new law states,

(e)(1) Each court clerk shall charge and collect an electronic traffic citation fee of five dollars (\$5.00) **for each traffic citation** resulting in a conviction. Such fee shall be **assessable as court costs** and paid by the defendant **for any offense cited** in a traffic citation delivered that results in a plea of guilty or nolo contendere, or a judgment of guilty. This **fee** shall be in addition to all other fees, taxes and charges.

Further, see the bolded type. It talks about each citation resulting in a conviction. But it talks about a single fee for any offense cited. Notice it doesn't say "for EACH offense" and it doesn't say "THESE fees." Therefore, the statutory language combined with the AG's opinion that court costs are charged per case, you should not charge more than one \$5 fee per citation. Remember, there's been one stop. Court costs are designed to recover actual costs to implement court procedures.

3. **Do we charge an electronic fee on seatbelt and child restraint charges? What about on other charges like equipment or registration violations or does it have to be a moving violation?**
See the chart at [http://www.mtas.tennessee.edu/web2012.nsf/CityAdminWeb/0CA2F0528D75F67785257AD3004D56EF/\\$FILE/child_restraint.pdf](http://www.mtas.tennessee.edu/web2012.nsf/CityAdminWeb/0CA2F0528D75F67785257AD3004D56EF/$FILE/child_restraint.pdf).
Only the first type of charge, where a child is required to be in a child restraint seat or booster would such a fee be chargeable as court costs. Remember, the statute sees it as a court cost. So whenever court costs are not normally charged, the fee should also not be charged. Another way to look at it is whether it is a "traffic citation" which is the only type of citation to which a fee can apply.

The definition in the e-citation statute makes the types of violations appear to be not just limited to moving violations. Sections (a) and (b), when read together, seem to make the fee apply to all citations for which your court has jurisdiction and not when the person is arrested (except for failure to sign the citation.)

§ 55-10-207. Citations

(a) As used in this section, "traffic citation" means a written citation or an electronic citation prepared by a law enforcement officer on paper or on an electronic data device with the intent the citation shall be filed, electronically or otherwise, with a court having jurisdiction over the alleged offense.

(b)(1) Whenever a person is arrested for a violation of any provision of chapter 8, 9, 10 or 50 of this title or § 55-12-139, or chapter 52, part 2 of this title, punishable as a misdemeanor, and the person is not required to be taken before a magistrate or judge as provided in § 55-10-203, the

arresting officer shall issue a traffic citation to the person in lieu of arrest, continued custody and the taking of the arrested person before a magistrate, except as provided in subsection (h).

For your reference:

Chapter 8=Rules of the Road (some are not Class C's...be careful)

Chapter 9= Equipment violations

Chapter 10 =Crimes, Penalties (some are Class C's like Open Container, but not many)

Chapter 50= Uniform Classified and Commercial Driver License Act

§ 55-12-139 = Registration

Chapter 52, part 2=Off-Highway Motor Vehicle/Child Safety

4. And we do not charge the e-fee if the charge is dismissed?

Correct. If the charge is dismissed and no court costs are assessed, then, of course, no. But, with some traffic citations when a judge sends a defendant to traffic school and then dismissed upon payment of court costs, then still you don't collect the fee. Although it is a court cost, it gets treated similarly to litigation taxes. If a charge is dismissed, it's dismissed. See the part of the statute that says, Each court clerk shall charge and collect an electronic traffic citation fee of five dollars (\$5.00) for each traffic citation **resulting in a conviction**. Such fee shall be assessable as court costs and paid by the defendant for any offense cited in a traffic citation delivered that results in a plea of **guilty or nolo contendere, or a judgment of guilty**.

Some cities, however, accept no contest pleas, in which case their citation could be seen as a conviction for the purposes of this statute's application only. Litigation taxes are be treated differently (dismissed cases do not incur litigation taxes).

5. Will the fee apply to old tickets?

Old tickets have effectively been "ruled on" once the "gavel came down." It is a judgment in the docket book for a particular amount. So the amount that was in effect at the time is the amount that should be collected (without the new fee). The new fee should be collected going forward.

6. Where should the funds from the \$5 be placed?

Technically, the funds should be transmitted to two places. The statute divides the \$5 fee: \$4 for the police and \$1 for the clerk.

- 1) The funds that are transmitted to the police agency **MUST** go into a special revenue fund, much like the Drug Fund.
- 2) The funds set aside for Court Clerks can go into a Restricted Fund Balance checking account and anything not used at the end of a budget year goes back into the General Fund.