

VOLUME NO. 34

Opinion No. 38

COUNTY TREASURER - Duties, disposition of penalties assessed for failure to register motor vehicle. MOTOR VEHICLES - Registration, disposition of penalties assessed for failure to register. Sections 25-201 and 53-109, R.C.M. 1947.

HELD: Penalties assessed for failure to register a motor vehicle pursuant to section 53-109, R.C.M. 1947, must be credited to the county general fund by the county treasurer.

March 23, 1972

Mr. Kenneth L. Haag
Dawson County Attorney
County Courthouse
Glendive, Montana 59330

Dear Mr. Haag:

You have requested my opinion as to the disposition of the penalties which may be assessed under section 53-109, Revised Codes of Montana, 1947.

Section 53-109, *supra*, relating to the transfer of title or interest in motor vehicles, provides in part (b):

“Within ten (10) days thereafter, the transferee shall forward both the certificate of ownership so endorsed and the certificate of registration, together with the information required under section 53-107, to the county treasurer, who shall forward the same to the registrar and no certificate of ownership and certificate of registration shall be issued by the registrar of motor vehicles until the outstanding certificates are surrendered to that office or their loss established to his reasonable satisfaction. Failure to make such application within the time provided herein shall subject the transferee to a penalty of ten dollars (\$10) plus one dollar (\$1) for each additional day in which said vehicle remains unregistered, not to exceed twenty-five dollars (\$25), said penalty to be collected by the county treasurer at the time of registration, and in addition to the fees otherwise provided by law.”

While this section requires the county treasurer to assess a penalty of up to \$25 for failure to comply with registration requirements, there is no provision in Title 53, chapter 1, R.C.M. 1947, as to the disposition of the penalties so assessed.

Section 25-201, R.C.M. 1947, provides:

“No county officer shall receive for his own use, any fees, penalties or emoluments of any kind, except the salary as provided by law, for any official service rendered by him, **but all fees, penalties and emoluments of every kind must be collected by him for the sole use of the county** and must be accounted for and paid to the county treasurer as provided by section 25-203 of this code and **shall be credited to the general fund of the county.**” (Emphasis supplied)

Pursuant to this code provision all penalties collected by county officers, including the county treasurer, shall be credited to the general fund of the county. In 31 **Opinions of the Attorney General**, no. 13, then

Attorney General Forrest H. Anderson considered the disposition of a two-dollar fee paid to the sheriff for verifying an application for a motor vehicle dealer's license. The statute in question required payment of the two-dollar fee to the sheriff, but did not provide for the disposition of the proceeds. Attorney General Anderson stated:

“By virtue of the provisions of section 53-118, R.C.M. 1947, heretofore set out, the sheriff is required to verify applications for licensing as a dealer. This is not a function which he may or may not do, but it is required by law. This being so, it is my opinion that it is an official service and that therefore the fees must be disposed of according to the provisions of section 25-201, R.C.M. 1947.”

Similarly, section 53-109 (b), *supra*, makes mandatory upon the county treasurer the collection of the penalty therein imposed. Thus, as there is no other provision for the disposition of the penalties assessed, such penalties must be disposed of pursuant to section 25-201, *supra*.

THEREFORE, IT IS MY OPINION that the penalties assessed and collected by the county treasurer pursuant to section 53-109 (b), *supra*, must be credited to the general fund of the county as required by section 25-201, *supra*.

Very truly yours,

ROBERT L. WOODAHL
Attorney General