

VOLUME NO. 41

OPINION NO. 59

COURTS - Use of bail schedule to collect \$10 charge mandated in section 46-18-236, MCA;
MONTANA CODE ANNOTATED - Sections 46-9-301, 46-9-302, 46-18-236.

HELD: In order to collect the additional \$10 charge required by section 46-18-236, MCA, a court may exercise its power under section 46-9-302, MCA, and increase the bail schedule for minor offenses in a like amount.

17 April 1986

James A. McCann
Roosevelt County Attorney
Roosevelt County Courthouse
Wolf Point MT 59201

Dear Mr. McCann:

You have requested my opinion on the following question:

How can a court collect the \$10 charge mandated in section 46-18-236, MCA, after bail bond has been forfeited for a misdemeanor?

In 1985, the Legislature enacted section 46-18-236, MCA, which states in pertinent part:

(1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a defendant upon his conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) \$10 in each misdemeanor case; and

(b) the greater of \$20 or 10% of the fine levied in each felony case.

Section 46-9-302, MCA, provides in pertinent part:

(1) A justice of the peace or city judge may, in his discretion, establish and post a schedule of cash bail for offenses

The Legislature adopted this provision to make it possible for people who are charged with minor offenses to post bail immediately, avoiding the time and inconvenience of a separate court hearing. See Commission Comments, annot. to § 46-9-302, MCA. When an offender who does not want to contest the charge fails to appear, his forfeited bail becomes the fine.

The justice of the peace or city judge is given ample authority to set a cash bail schedule in section 46-9-302, MCA. Section 46-9-301, MCA, enumerates various factors which the court may consider in establishing bail. In addition, where the bail schedule is used for minor offenses, it is reasonable that the court should have the flexibility to include all charges which may accrue to the case, such as the \$10 charge mandated by section 46-18-236, MCA. The alternative of implementing the charge at the conclusion of a case can result in collection problems where there has been a forfeiture of bail.

Your inquiry concerns the issue of how the charge mandated by section 46-18-236, MCA, is to be collected when bail is forfeited.

While bail is not forfeited until an offender fails to appear for hearing, there is no reason that the bail schedule cannot take into account the possibility of the case culminating in that fashion. This procedure avoids the dilemma for the court in trying to collect the additional charge after the case has ended. It is also consistent with the intent of the Legislature that all people who are fined should pay the \$10 fee, even if they forfeit bail.

THEREFORE, IT IS MY OPINION:

In order to collect the additional \$10 charge required by section 46-18-236, MCA, a court may exercise its power under section 46-9-302, MCA, and increase the bail schedule for minor offenses in a like amount.

Very truly yours,

MIKE GREELY
Attorney General