

**Intoxicating Liquors—Costs—Fines.**

The only costs to be deducted in cases involving the prohibition laws in determining the amount of money to go to the law enforcement fund are the costs of procuring the evidence and arresting the defendant.

The duties of the clerk of court and county treasurer with reference to the fund stated.

Jay G. Larson, Esq.,  
State Examiner,  
Helena, Montana.

September 15, 1925.

My dear Mr. Larson:

You have requested my opinion upon the following questions:

“Please advise what constitutes the costs to be deducted from a fine imposed against a violation of the law relating to the manufacture, sale and use of intoxicating liquors, as provided by chapter 116, session laws 1923.

“What is the rate for board the sheriff can charge the county for prisoners who have violated this law?

“After the costs are deducted from the fine how shall this balance be divided and to what funds?”

The statute covering the questions you have asked is section 11084, R. C. M. 1921, as amended by chapter 116, laws of 1923, at page 288, which reads as follows:

“There is hereby created a fund known as the ‘law enforcement fund.’ All fines must be applied to the payment of the costs of the case in which the fine is imposed, as hereafter provided, and after such costs are so deducted from the fine by the clerk of the court to whom such fine has been paid, the balance of such fine and all other receipts from penalties,

confiscations and forfeitures for violation of the law relating to intoxicating liquors, and from the sales of all property seized, confiscated and sold under such laws, shall be paid over to the county treasurer of the county in which such violation or sale occurred, and such county treasurer shall credit fifty per cent to the general fund of the county, and the remaining fifty per cent thereof shall be by said county treasurer transmitted to the state treasurer, and by such state treasurer deposited to the credit of the law enforcement fund.

"The term 'Costs' as herein used shall mean to include all costs incurred in connection with the securing of evidence against, and the arrest of the defendant or defendants."

It is my opinion relative to the first question asked that the costs mentioned in said paragraph are the "costs incurred in connection with the securing of evidence against, and the arrest of the defendant or defendants."

You will observe that the paragraph provides: "All fines must be applied to the payment of the costs of the case in which the fine is imposed, as hereafter provided." The provision referred to reads as follows:

"The term 'Costs' as herein used shall mean to include all costs incurred in connection with the securing of evidence against and the arrest of the defendant or defendants."

It would appear from this provision that the costs meant to be deducted from the fine are just the actual costs of procuring the evidence and making the arrests.

The sheriff is entitled to charge the county for board of a prisoner who has violated the liquor law at the same rate that he is entitled to charge for the keep of other prisoners. This charge, however, cannot be deducted from the fine paid in the case by the defendant.

After the costs are deducted by the clerk it is then the duty of the clerk of the district court to pay the balance of the fine over to the county treasurer of the county in which the crime was committed, who shall credit fifty per cent (50 %) of the fine to the general fund of the county, and the remaining fifty per cent (50 %) thereof the treasurer shall transmit to the state treasurer and the state treasurer shall deposit it to the credit of the law enforcement fund.

The county treasurer has no authority to pay any costs incurred in the case to anybody. He can do only one thing with all the money received by him as fines in liquor cases, that is, he must divide such fines equally between the general fund of the county and the state treasurer. He has no option in the matter.

Very truly yours,  
L. A. FOOT,  
Attorney General.