

Opinion No. 236.

**Highway Patrol—County Treasurers
—Clerical Services—Drivers License
—Refunds.**

HELD: 1. The Highway Patrol has no power or authority to pay county treasurers for additional clerical services made necessary by the extra work required to sell drivers' licenses.

2. Speaking generally, where the collection of a license fee is legal and payment thereof is voluntary and without protest, such fee may not be refunded in the absence of a statute authorizing a refund.

January 27, 1936.
Montana Highway Patrol Board
The Capitol

You have submitted the following:

“(1) A county treasurer has submitted to this office a bill for additional clerical services made necessary through the extra work required to sell drivers licenses. We should like to know if such a bill is a legal claim against the Highway Patrol.

“(2) Drivers licenses are issued to counties and a county account is opened charging the county with the licenses issued. As they remit their money to the state treasurer covering the sale of drivers licenses, it is placed to the credit of the Highway

Patrol Revolving Fund #186. The county accounts are credited for all remittances received from the sale of drivers licenses, and is also credited for all returned unsold drivers licenses. However, in many instances, counties have returned to this office licenses marked 'cancelled' for various reasons. As, a man purchases a 25-cent license and then finds that he should have bought a 50-cent license. Therefore, he goes to the county treasurer and asks for credit on a 50-cent license by turning in his 25-cent license and adding another twenty-five cents and having the county treasurer issue him a 50-cent drivers license. We should like to know if this practice is legal and proper.

"We should also like to know if money can be refunded to an individual who has purchased a drivers license for any reason whatsoever."

Replying to your first question, Section 10, Chapter 185, Laws of 1935, provides that every owner and driver of a motor vehicle shall procure a driver's license from the registrar of motor vehicles or from the county treasurer of the county in which applicant resides. It also provides for a fee of fifty cents for a driver's license and for a fee of twenty-five cents for any additional drivers of passenger cars. Section 11 Id., requires that all fees be placed in a revolving fund by the state treasurer for the use of the highway patrol: "All fees in the state highway patrol revolving fund shall be used only for the purpose of said patrol as provided in this Act, and warrants thereon shall be issued as provided by law."

There is no provision made in the law for payment to county treasurers for additional clerical services made necessary by the extra work required to sell drivers' licenses. In the absence thereof and in the face of the provision that all fees in the state highway patrol revolving fund shall be used only for the purposes of the patrol, I am of the opinion that the highway patrol has no power or authority to make such payments to county treasurers.

All the facts in a particular case have not been given in your second question. Speaking generally, how-

ever, it may be said that where the collection of a license fee is legal and payment thereof is voluntary and without protest, in the absence of a statute authorizing it such fee may not be refunded. (See our opinion No. 295 in Volume 15, Opinions of the Attorney General, given to George L. Knight, August 9, 1933, and the authorities therein cited.)

This also answers your last question. It must be understood, however, that we are stating the general rule and that there might be exceptions. Inasmuch as no facts are stated, however, we are unable to go further than to give you the general rule.