

July 20, 1936.

Mr. Oscar C. Hauge  
County Attorney  
Havre, Montana

We have your letter of July 15, relative to statutes against intoxicated drivers.

Section 1746.2, R. C. M. 1935, to which you refer, was enacted as Section 3 of Chapter 166, Laws of 1929, and prohibits the operation of a motor vehicle by anyone "\* \* \* upon or over any highway, street or public thoroughfare of the State of Montana, whether within or without a municipality while intoxicated or under the influence of intoxicating liquor or of any drug or narcotic \* \* \*."

Section 1741.7 (11) R. C. M. 1935, of the Montana Highway Patrol Act, which was enacted as Chapter 185, Laws of Montana 1935, declares it to be an offense against that act to drive "\* \* \* a motor or other vehicle while intoxicated \* \* \* upon the main or secondary highways of the State of Montana outside of incorporated cities or towns."

Although said Chapter 185 is the later enactment, we see nothing therein which can be said to repeal said Section 1746.2, either expressly or impliedly. The two are not in conflict. Both may be enforced. And for the offense of driving while intoxicated outside the limits of incorporated cities or towns, the prosecutor may elect to proceed under either of them. In re Wilson's Estate, 102 Mont. —, 56 Pac. (2d) 733; 16 Corpus Juris 69, and 59 Corpus Juris 917, et seq.

Section 1741.12 of the Highway Patrol Act provides: "\* \* \* All fees, fines and forfeitures collected in any court from persons apprehended or arrested by patrolmen for violation of this Act and the laws and regulations relating to the use of state highways and the operation of vehicles thereon must be paid to the State Treasurer of Montana, and by him credited to the State Highway Patrol Revolving Fund, and a separate account shall be kept thereof; \* \* \*."

Now it is our opinion that a highway patrolman may arrest those who violate either Section 1746.2 or Sec-

### Opinion No. 330.

#### Highway Patrol—Intoxicated Drivers —Patrolmen—Fines.

HELD: 1. Sections 1746.2 and 1741.7 (11), R. C. M. 1935, relating to intoxicated drivers, are both in effect.

2. Where an arrest is made under either of said sections by a Highway Patrolman, any fines received should be paid to the State Treasurer as provided in Section 1741.2, R. C. M. 1935; where the arrest is made by any other peace officer, the fines do not properly belong to the State Highway Patrol Revolving Fund.

tion 1741.7 (11), supra. If the offense occurs within the boundaries of an incorporated city the defendant should be charged with violating Section 1746.2, supra, but in either event when the arrest is made by a State Highway Patrolman any fines received should be paid to the State Treasurer, as provided in Section 1741.2, quoted above. In the event that the arrest is made by a sheriff, or other peace officer, even though the defendant be charged with violating some provision of the Highway Patrol Act, the fines received do not properly belong to the State Highway Patrol Revolving Fund.