

Opinion No. 197.**Highway Patrol—Justice of Peace—
Fees—Court Costs.**

HELD: 1. Justice fees are costs in all class townships.

2. In counties where Justice receives a salary, the fees of Justice are paid to County Treasurer; in other townships, such fees are retained by the Justice.

3. Costs in cases of violation of Highway Act are Justice fees, fees of jurors and witnesses, and fees for service of process.

4. In case of violation of Highway Act, where arrests are made by the patrolman, the county is entitled to the cost of board of prisoners.

November 19, 1937.

Mr. L. C. Boedecker
Supervisor Montana State
Highway Patrol
Helena, Montana

Dear Sir:

You have submitted to this office the question as to what constitutes court costs in the prosecution of cases involving a violation of the highway patrol act.

Paragraph 2 of Section 8 of Chapter 182, 1937 Session Laws, provides:

“For the purpose of this act only, the fees of justices of the peace in all offenses in which the fine is five dollars or less shall be \$1.00, but if the fine is in excess of five dollars the justice of the peace shall be permitted the fee now prescribed by law; provided that no additional fees shall be paid justices of the peace where salaries are fixed by law.”

That part of Section 4926 which is applicable herein provides:

“The following is the schedule of fees which must be collected by justices of the peace in every criminal action instituted in the justice court, to-wit:

For all services rendered where there is a plea of guilty, two dollars and fifty cents.

For all services rendered where there is a trial, five dollars."

Paragraph 16 of Section 6 of Chapter 182, *supra*, provides:

"Upon conviction, the court cost, or any part thereof, may also be assessed against the defendant in the discretion of the court."

A determination of when court costs can be imposed, constitutes a determination of what court costs are. It has been contended that the fees of the justices of the peace are not allowable, as a part of the court costs, in townships where the justice of the peace receives a salary. The inference and conclusion of such contention being that while the justice is prohibited from receiving a fee, so likewise is the county.

Section 4928 provides:

"Justices may retain fees, when. Justices of the peace shall retain as their compensation the fees herein provided for, save and except in those townships where a stated salary is provided by law to be paid to justices of the peace; provided, however, that in all cases justices of the peace may retain the miscellaneous fees provided for in the preceding section."

Prior to the enactment of the highway patrol act and amendments thereto, Section 4926 made it mandatory upon the justice of the peace to collect fees in all criminal cases, not only in townships where the justice was compensated for his services by fees, but in townships where he received a salary.

Section 4930 provides that the justice shall collect fees prescribed by law in townships having a population of ten thousand people and upwards, except the fees in criminal actions other than for the issuance of search warrants, and shall pay the same into the county. Obviously there is a conflict between Section 4926 and Section 4930. Section 4926 was enacted in the year 1921 and Section 4930 in the year 1917. The rule of statutory construction is, that where there is a conflict between one

statute and another, or part thereof, the later enactment prevails. The language used in Section 4930, "except the fees in criminal actions," must be stricken from said section by reason of its conflict with Section 4926; and interpreting the remainder thereof, it follows that the fees of the justice of the peace in townships where the justice receives a salary must be remitted to the county. Such certainly was the law prior to the enactment of the patrol act and amendments thereto, and, unless the said act is in conflict therewith, such now is the law. The patrol act and amendments thereto have not modified or repealed said former law, except in so far as paragraph 2 of Section 8 of said chapter provides a justice fee of \$1.00 in all offenses in which the fine is \$5.00 or less, and except in so far as Chapter 182 makes it discretionary upon the court upon conviction to impose court costs. Paragraph 2 of Section 8 of said Chapter 182 provides, among other things, that no additional fees shall be paid justices of the peace where salaries are fixed by law. This provision of said chapter does not impliedly or expressly exclude the county from being the beneficiary of such justice fees, if the court exercises its discretion in levying the same.

Section 4928 must be construed and read together with the provision last cited of said patrol act. By so reading and construing said provisions of the law, a definite implication prevails that the justice of the peace in any class township may impose the justice fees as a part of the court costs.

Sections 4926, 4928, and 4930, except as they have modified each other as aforesaid, remain as the existing law in so far as they have not been repealed or modified by the patrol act.

If the justice fee is levied as a part of the cost, in the discretion of the court, in townships where he receives a salary, it is based upon the theory that the county is obligated to pay a salary under the will of the legislature, thus the county's obligations and expenses are enhanced and it is only fair that the county receive the advantage of such justice fees in those counties where a salary is paid. The purpose of paying the justice a salary in the larger class townships is not to give an advantage to the offender, and there is no good reason why the

offender should be in a more advantageous position in a township where the justice receives compensation by fee, than in a township where the justice receives compensation by salary. It is only reasonable to believe that the legislature intended that the county should offset the salary paid, to some extent at least, by the receipt of the justice fee cost imposed. Neither does any good reason exist to believe that the legislature intended the Patrol to receive said fees. The Patrol is not contributing toward the salary of the justice of the peace. It receives the fine after deducting the cost. If there is any profit it accrues to the Patrol. When the county pays the salary, it has subjected itself to an expenditure, and when it applies the cost to its own use it is doing nothing more than compensating itself as much as possible for costs incurred.

Therefore it necessarily follows that the fees of justices of the peace are court costs and part of the fines, when imposed, in townships where the justice receives a salary, as well as in townships where the justice does not receive a salary. Such fines may be either \$1.00, \$2.50, or \$5.00, dependent upon the amount of the fine and whether a plea of guilty is made or trial had.

Further court costs may include juror and witness fees, and sheriffs or constables fees for services of process.

While the board of the prisoners in the county jail is not a part of the court cost, yet Section 1741.12 allows the county to be reimbursed from the fine for such items if prisoners have been boarded.