

November 10, 1937.

Mr. John K. Claxton
 County Attorney
 Butte, Montana

My Dear Mr. Claxton:

You have submitted to this office the question as to what portion, if any, of the highway patrol fines, collected by the justices of the peace, shall be retained by the county.

In answering your question the further question is implied. That is, if a county retains any portion of such fines, in what form shall the same be disbursed?

Section 1741.12 provides:

“Highway patrol revolving fund—composition of—payments from. For the purposes of carrying out the provisions of this act, there is hereby created a state highway patrol revolving fund to which shall be credited all of the fees above mentioned and, in addition thereto, all fines collected. Payment of all proper and approved expenditures for the salaries, expenses, equipment and maintenance of the highway patrol, including court costs not otherwise provided for, shall be made from the state highway patrol revolving fund in the same manner as other claims against said fund are paid. 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; and at the time of payment of any such fee, fine or forfeiture there shall be filed with the state treasurer a complete statement showing the total of the fees, fines or forfeitures received or incurred, which statement shall give the title of the court and cause and be subscribed by the person or officer making such payment; provided that from said fund shall be paid all court costs and fees, and expenses of the counties, in the event prisoners have been boarded.

“All fees in the state highway patrol revolving fund shall be used only for

Opinion No. 198.

Highway Patrol—Justice of the Peace—Counties—Funds.

HELD: 1. From all fines and costs in cases where arrest has been made by the Highway Patrol, the Justice of the Peace may deduct court costs and remit the balance to the State Treasurer, for benefit of Patrol Revolving Fund.

2. All fines and court costs in cases involving highway violations, when arrests have been made by other than highway patrolmen, are paid into county treasury.

the purposes of said patrol as provided in this act, and warrants thereon shall be issued as provided by law."

Section 1741.7 designates certain offenses committed outside of incorporated towns, over which the highway patrol has jurisdiction. Other sections of the law extend the jurisdiction of the patrol, in a limited number of offenses committed, to within the incorporation. In offenses against the highway laws, committed upon the highways, outside of incorporated cities or towns, the patrol has not exclusive jurisdiction; such offenses are equally within the county officials' jurisdiction. Subject to a few exceptions, within an incorporated city or town, the patrol has no jurisdiction of said offenses. If an official, other than a patrolman, has caused an offender to be prosecuted and a fine has resulted, the county shall receive the entire amount of said fine, less of course the cost, which cost shall be disbursed to the persons entitled thereto.

It has been held by a former attorney general (Nagle), Opinion No. 330, Vol. 16, Opinions of Attorney General, that:

"In the event that the arrest is made by a sheriff or other peace officer, even though the defendant be charged with violating some provisions of the highway patrol act, the fines received do not properly belong to the State Highway Patrol Revolving Fund."

If the arrest is made by patrolmen for an offense cognizable by them, the fines shall accrue to the State Highway Patrol Revolving Fund, less the cost, which cost shall accrue to the county, to be disbursed to the persons entitled thereto.

Among other provisions, Section 1741.12 provides:

"* * * provided that from said fund (meaning the State Highway Patrol Revolving Fund) shall be paid all court costs and fees, and expenses of the counties, in the event prisoners have been boarded."

In other words, fines resulting from the arrests by patrolmen, for offenses within their jurisdiction, shall be received and be remitted to the state

treasurer of Montana, and credited to the State Highway Patrol Revolving Fund. A separate account shall be kept thereof, and at the time of the payment of said fines there shall be filed with said treasurer a complete statement showing the total of the fines received and other matters. But the county is authorized, before the remittance of the same, to first deduct said cost and pay out the same to the persons entitled thereto. The amount of said cost is not required to be first forwarded to the state treasurer, and later remitted, upon order of the patrol, to the persons entitled thereto. To do so would be an idle and useless act, and would create embarrassment and additional accounting. The costs expended and paid are adequately itemized in the county, and the patrol's interest in the same is amply safeguarded. Occasions may arise in some cases where a jury is called, and the jury is entitled to prompt payment of its fees, and unless the county assumed such costs, the jury could not receive the immediate and prompt payment of its fees.

It must be presumed, when legal charges for costs have been submitted and allowed, that there would be no advantage to the highway patrol in receiving the entire fines, and later having to cause the cost to be remitted back to the county. On the other hand, your attention has been already called to the many inconveniences that may so arise.

Therefore, it is my opinion that for all arrests made by patrolmen for offenses within their jurisdiction, the Highway Patrol Revolving Fund shall be the recipient, less the costs involved, which shall be retained by the county, to be disbursed to the persons entitled thereto. And for all arrests by the sheriff, or other peace officer, under the Highway Patrol Act, the county shall receive the same.