

Opinion No. 248.**Highway Patrol—Justice Courts—
County Attorney—Duties,
Fees.**

HELD: 1. The Justice of the Peace is the only one having authority to dismiss a criminal action filed before him, either upon his own motion, or that of the County Attorney.

2. A Highway Patrolman has no authority to dismiss, or to move the dismissal of a criminal action pending before a Justice of the Peace.

3. The Justice of the Peace is entitled to the fee prescribed by statute, regardless of whether or not a trial has been had or fine or sentence imposed.

4. A Justice may deduct his statutory fees from his monthly remittance, although there may not have been any fine collected in a specific case or cases during said period.

5. The County is entitled to reimbursement for cost of board of prisoners in highway patrol cases upon proper claim therefor being filed with the Highway Patrol.

6. The Justice is entitled to the statutory fee for transmitting papers on appeal to the District Court, in addition to the fee for approval of bond.

7. In Townships where Justice receives no salary, his fees are paid by the County.

February 18, 1938.

Mr. A. E. Williamson
First Assistant State Examiner
The Capitol Building
Helena, Montana

Dear Sir:

We have your letter submitting the following questions:

1. "After a summons has been filed with the Justice of the Peace by a Highway Patrolman, who has the power to dismiss the case, the County Attorney, the Patrolman, or the Justice of the Peace?"

The county attorney is chargeable with all criminal prosecutions in his county wherein the State is party plaintiff (Section 4919). The highway patrol is chargeable with apprehending persons who violate the highway patrol laws. Its duties are distinct and separate from those of the county attorney. When the county attorney deems that he has insufficient cause to warrant a prosecution, it is then within his authority to move the justice of the peace for a dismissal of the complaint and action, and for good cause shown the court is authorized to grant the motion. The law contemplates, and orderly procedure dictates, that such motion shall be made by the county attorney and not by the patrolman.

2. "If an arrest is made or a summons is filed by a Patrolman for a violation of the Highway Patrol Act, and is later dismissed without hearing or trial, is the Justice entitled to a fee for the services rendered by him, as in any other criminal action?"

3. "If a fee is due the Justice, in what amount?"

The last paragraph of Section 8 of Chapter 182 of the 1937 Session Laws provides:

"For the purpose of this act only, the fees of justice of the peace in all offenses in which the fine is five dollars (\$5.00) or less, shall be one dollar (\$1.00), but if the fine is in excess of five dollars (\$5.00), 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."

Section 6 of said chapter enumerates the different offenses and specifies the minimum and maximum fines and penalties. When the complaint is filed and then dismissed, as referred to in my answer to your question No. one herein, the amount of fee allowed the justice of the peace shall depend upon the grade or class of offense, as specified in Section 6, supra. If the offense

permits a penalty of a fine of \$5.00 or less, the fee allowed shall be \$1.00, but if the offense is one in which the fine is in excess of \$5.00 (where the case has been dismissed) the justice shall receive a fee of \$2.50. It is not necessary that the fines be imposed by a judgment of the court before this fee is allowed. The mere fact that the complaint is predicated upon the statute which authorizes the infliction of a specified fine warrants the fee to be paid. Where the justice of the peace receives a salary, the statute prohibits him from receiving the benefits of this fee and the same shall be remitted to the county and retained by it.

4. "If a Justice handles several cases in any one month, all of which are reported by him in the same monthly report, can the Justice deduct court costs of one case in which there is no fine collected, from another case or cases where there is sufficient money received to pay such court costs?"

Sections 12347 and 12433 provide for the remission of costs by the justice of the peace to the proper official, and the manner in which the justice shall make his report to said official. As the law authorized the justice to make monthly remittances, it follows that the cost in the different cases may be treated by the justice of the peace in the aggregate, and if a justice handles several cases in any one month, all of which are reported by him in his monthly report, he is authorized to deduct the court cost of one case in which there is no fine collected from another case, or cases, where there is sufficient money received.

5. "We believe that there is a distinction made in the law, between court costs and the expense of board of prisoners, and that the counties should be reimbursed for board of prisoners in Highway Patrol cases, by the State Highway Patrol Board upon the filing of a proper claim by the County Clerk of the county involved. Are we correct in this assumption?"

In Opinions of the Attorney General, Vol. 17, Opinion No. 197, this office held that there is a distinction between court costs and expenses of

board of prisoners. The county should be reimbursed for the board of prisoners in highway patrol cases by the State Highway Patrol Board, upon the filing of proper claims. If this procedure were not followed, it would be almost impossible for the counties to be protected in the expenditures made for the board of prisoners, because in many cases the prisoners would be unable to pay the same and would not be subject to execution.

6. "Relative to Justice fees as enumerated in Section 4926, in a criminal case, whether a Highway Patrol or any other criminal case, does the fee of \$5.00 for all services rendered where there is a trial, include the fee for filing and approving a bail bond, or is the Justice entitled to an additional dollar for such service and, if so, should this extra dollar be paid by the county or by the defendant?"

7. "Would the same ruling apply to the \$1.50 fee for transmitting papers on appeal?"

Section 4926 among other provisions provides that the justice shall charge a fee of \$1.00 for taking, filing and approving bail bond, including the justification. And said section further provides that justices may charge a fee of \$1.50 for transmitting papers on appeal, including the bond and approval thereof. Therefore, it follows under the express mandate of said section, that the justice is entitled to a fee of \$1.00 for approving the bail bond, and a fee of \$1.50 additional for transmitting the papers on appeal. Pursuant to the rule and reasoning set forth in Opinions of the Attorney General No. 197, and Opinion 202, Vol. 17, thereof, said fee of \$1.00, for the approval of the bail bond, and said fee of \$1.50, for the transmitting papers on appeal, are to be paid the justice of the peace, in the townships where he receives no salary, by the county.

This office in Opinion 202, supra, said:

"It is the policy of the law to afford every defendant in a criminal action the free and untrammelled privilege of exercising all of his constitutional rights, and to subject an appellant in such an action to pay a fee

in order to make an appeal from a Justice to a District Court, would tend to thwart that right and invade his constitutional prerogatives."