

Opinion No. 120.

**Justices of the Peace, fines by—
Distribution of Fines.**

Held: A justice of the peace who does not receive a fixed salary, should deduct the costs where a fine has been collected and remit the balance to the county treasurer; and in cases involving violation of the highway patrol act, the balance—after deducting the costs—SHOULD BE RE-

MITTED TO THE STATE TREASURER. In cases involving violations of the fish and game laws, the justice of the peace must remit the total amount collected to the state game warden, and by the warden paid over to the State Treasurer and the costs are then collected from the state by the county, and the justice will then file a claim with the county.

September 11, 1943.

Mr. Lyman H. Bennett, Jr.
County Attorney
Madison County
Virginia City, Montana

Dear Mr. Bennett:

You have requested my opinion as to the procedure to be followed by a justice of the peace and the county treasurer in the distribution of money collected as fines by the justice of the peace.

Section 12433, Revised Codes of Montana, 1935, provides:

"All fines and forfeitures collected in any court, except police courts, must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred; and after such costs are paid, the residue must be paid to the county treasurer of the county in which the court is held and if not otherwise provided by law, by him credited to the general school fund of said county; and at the time of payment of any such fine or forfeiture there shall be filed with the county treasurer, a complete statement showing the total of the fine or forfeiture received or incurred with an itemized statement of the costs incurred by the county in such action, which statement shall give the title of the cause and be subscribed by the person or officer making such payment."

It is apparent from this section the justice of the peace should not remit the total amount to the county treasurer, but should deduct the costs of the case and pay the balance to the county treasurer.

You advise me the justices of the peace in your county "have been in the habit of remitting the total amount

collected by them as fines and filing claims against the county for their costs." Such a practice would simplify the payment of costs to the justice of the peace, as the same method would be employed in collecting all costs. In criminal cases where no fine is collected the justice is entitled to receive as compensation the fees enumerated in Section 4926, Revised Codes of Montana, 1935. He would collect these fees by filing a claim against the county, and the same would be paid out of the general fund.

The retention of the costs by the Court before remitting the balance of the amount collected as a fine is provided in Section 15 of Chapter 199, Laws of 1943, of the Highway Patrol Act:

"The court, after deducting all costs and fees, shall immediately transmit the balance of said fine to the state treasurer as provided by law."

A different rule prevails in cases involving violation of fish and game laws, as under Section 3753, Revised Codes of Montana, 1935, all fines are paid to the state game warden, and by the warden to the State Treasurer, and under Section 3754, Revised Codes of Montana, 1935, costs are collected from the state by the county—and the justice of the peace would file a claim for the same with the county.

However, justices of the peace who receive a fixed salary are not to retain fees. This is provided in Section 4928, Revised Codes of Montana, 1935:

"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."

While uniformity would be achieved in allowing justices of the peace to collect all fees due them by filing a claim against the county, yet the legislature has not so provided. However, if a justice of the peace has remitted the total fine to the county treasurer, it would be inequitable not to allow him to receive a fee and he may file a claim for the same against the county.

It is my opinion that a justice of the peace who does not receive a fixed salary, should deduct the costs where a fine has been collected, and remit the balance to the county treasurer; and in cases involving violation of the Highway Patrol Act, the balance—after deducting the costs—should be remitted to the state treasurer. In cases involving violations of the fish and game laws, the justice of the peace must remit the total amount collected to the state game warden and by him paid to the state, the costs are then collected from the state by the county, and the justice will then file a claim with the county.

Sincerely yours,
R. V. BOTTOMLY
Attorney General