

## Opinion No. 143.

**Highway Patrol Fines—Fees of the Justice of the Peace—Justice of the Peace on Regular Salary.**

Held: No justice of peace fees should be withheld from fine imposed for violation of Highway Patrol Act (Chapter 199, Laws of 1943), where fine is imposed by justice of peace receiving regular salary.

October 9, 1943.

Mr. Charles L. Sheridan  
Supervisor  
Montana Highway Patrol  
Helena, Montana

Dear Mr. Sheridan:

You have requested my opinion as to the propriety of a justice of the peace deducting fees, ranging in amount from \$1.00 to \$2.50, from fines imposed under the provisions of Chapter 199, Laws of 1943, in those cases where the justice of the peace imposing the fine is paid a regular salary and is not dependent for compensation on fees.

Section 15, Chapter 199, Laws of 1943, provides that the court, after deducting all costs and fees, shall immediately transmit the balance of the fine to the State Treasurer, and Section 13 of the chapter requires the State Treasurer to deposit the fine to the credit of the state general fund.

Section 12 of the chapter provides the fees of the justice of the peace imposing the fine, and contains the exception "provided, no additional fees shall be paid justices of the peace where salaries are fixed by law." In order to determine the proper fee to be paid, the section must be read in connection with Section 4926, Revised Codes of Montana, 1935, providing generally the fees of a justice of the peace in criminal actions.

Section 4929, Revised Codes of Montana, 1935, provides a specified salary for justices of the peace in certain townships, the amount thereof being based on population, and Section 4930, Revised Codes of Montana, 1935, requires the justice of the peace receiving a salary to collect the fees prescribed by law for justices of the peace, **except the fees in criminal actions other than for the issuance of search**

**warrants, and pay them into the county treasury.**

In the early history of the state, a justice of the peace was entirely dependent upon fees for compensation, these fees to be paid by the parties litigant in civil matters, and by the county in criminal matters, and this practice continued until the enactment of Chapter 84, Laws of 1917, now appearing as Sections 4929 and 4930, Revised Codes of Montana, 1935, which, as above set forth, permits payment of salary in certain townships.

The apparent intent of the legislature was that the county was to be reimbursed from the fine such amount for costs and fees as it in turn was compelled to expend, but that in the case of a fine being imposed by a justice of the peace receiving a salary, no fee should be paid by reason of his services in the case. We must take the law as enacted by the legislature.

It is therefore my opinion no justice of the peace fees should be withheld from fines imposed under Chapter 199, Laws of 1943, by a justice of the peace receiving a salary.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General