

Opinion No. 41**Salaries of Justices of the Peace—Fees—Highway Violations—
Remittance to County and State Treasurers**

Held: A salaried justice of the peace can deduct costs and fees from fines and forfeitures where the arrest is made by a highway patrolman for highway offenses. The fees must be remitted to the county treasurer.

December 19 1957

Mr. Anthony F. Keast
County Attorney
Missoula County
Missoula, Montana

Dear Mr. Keast:

You have requested my opinion whether a salaried justice of the peace can deduct costs and fees from fines and forfeitures where the arrest is made by a highway patrolman for highway offenses.

Section 31-115, RCM, 1947, provides that the court, after deducting all costs and fees, shall immediately transmit the balance of the fine to the state treasurer. The expenses of the county, except fees of officers who are paid a regular salary, are a claim against the state of Montana.

"Section 32-21-157 (d), RCM, 1947, enacted by Chapter 263, Laws of 1955, provides that upon conviction the court costs or any part thereof, may also be assessed against the defendant in the discretion

of the court. This provision exceeds the common law rule prohibiting the assessment of costs against a defendant in a criminal proceeding. See, 20 Opinions of the Attorney General, 327, Op. No. 256."

The fees of a salaried justice of the peace are court costs and if costs are levied against the defendant they become a part of the fine. The court costs are deducted from the fine and the balance is remitted to the state treasurer for deposit in the general fund. See, 17 Opinions of the Attorney General, 238, 240, Ops. No. 197 and 198.

If court costs are not levied against the defendant but a fine is imposed, the court costs, which include the fees of the salaried justice of the peace, are deducted from the fine and the balance, if any, is remitted to the state treasurer. Or, if no fine is levied against the defendant, then all expenses of the county except the fees of a salaried officer are a proper claim against the state.

A claim against the state for county expenses incurred in the prosecution of a highway violation may only occur if the fine is inadequate or is not levied. If either of the two situations occur, the fees of a salaried officer are not a proper claim against the state. This limitation for reimbursement recognized the fact that a salaried officer will be compensated by the county though the fine is inadequate or is not levied. However, if a fine is levied this exception does not prohibit a salaried justice from exacting the criminal fees provided in Section 25-303, RCM, 1947, and remitting the fees intact to the county treasurer as required by Section 25-305, RCM, 1947. As stated in 17 Opinions of the Attorney General, 371, Op. No. 305:

"When a justice receives a salary, the county shall receive and be the beneficiary of such fees. Any additional fees for witnesses, jurors, and subpoena service connected therewith, together with the board of prisoners, shall be allowable and collected and aid to the county, or the parties, as their interest may appear."

A forfeiture is a fine when the defendant fails to appear and the amount posted for bail is the fine assessed. If a forfeiture occurs the court may deduct court costs and fees, if any, and remit the balance to the state treasurer.

Therefore, a salaried justice of the peace can deduct costs and fees from fines and forfeitures where the arrest is made by a highway patrolman for highway violations. The fees must be remitted to the county treasurer. This Opinion expressly overrules 20 Opinions of the Attorney General 177, Op. No. 143, dated October 9, 1943.

Very truly yours,
FORREST H. ANDERSON
Attorney General