

Opinion No. 16

COURTS; Costs; deduction from fines—COURTS; FINES; deductions of costs—DISTRICT COURT; Costs; deduction from fines of juvenile traffic offenders—FINES; deduction of costs—SECTION 94-801-1, Revised Codes of Montana, 1947—CHAPTER 149, Laws of 1961.

Held: Costs may be deducted from fines collected by district courts from children under eighteen years of age for unlawful operation of motor vehicles.

June 14, 1961

Mr. Thomas J. Hanrahan
Lewis and Clark County Attorney
Helena, Montana

Dear Mr. Hanrahan:

You have requested my opinion whether, after July 1, 1961, court costs may be deducted from fines collected by district courts from children under eighteen (18) years of age for unlawful operation of motor vehicles.

This question is prompted by the enactment of Chapter 149, Laws of Montana, 1961, which, so far as applicable here, provides:

"Section 1. All fines collected by the district courts from children under eighteen (18) years of age, for unlawful operation of motor vehicles resulting from traffic summonses issued by the peace officers of the cities, counties, or by highway patrolmen shall be retained by the county treasurer of the county in which the offense occurred and at the end of each month distributed as follows:

- (a) Fines collected as the result of summonses issued by city police officers shall be distributed to the city in which the police officer is employed, and credited to the city general fund;
- (b) Fines collected as the result of summonses issued by the county peace officer shall be retained by the county treasurer and credited to the county road fund;
- (c) Fines collected as the result of summonses issued by state highway patrolmen shall be paid to the treasurer of Montana and by him credited to the general fund of the state."

The question is whether this statute requires that all fines paid be remitted to the county treasurer without deduction of costs for the dis-

tribution required by statute. If so, Chapter 149 must repeal by implication Section 94-801-1, RCM, 1947, in the case to which it applies, as that section requires deduction of costs. It provides:

"94-801-1. (12433) Fines, costs and forfeitures, how disposed of. 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."

This section has been held to be mandatory as to all fines. In *Flynn vs. District Court*, 24 Mont. 33, the court said:

"By Section 2910 of the Penal Code, all fines 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, and after such costs are paid the residue must be paid to the county treasurer of the county in which the court is held."

It should be noted that Section 94-801-1, *supra*, provides for the deduction of the fines and forfeitures before transmission of the remaining funds to the treasurer. Chapter 149 provides only for the distribution of the fine money after it reaches the treasurer's office. This is clearly pointed out in the title of Chapter 149:

"AN ACT TO PROVIDE FOR THE DISTRIBUTION OF FINES COLLECTED BY DISTRICT COURTS FOR THE UNLAWFUL OPERATION OF MOTOR VEHICLES BY CHILDREN UNDER THE AGE OF EIGHTEEN (18) YEARS PROVIDING FOR TIME OF SUCH DISTRIBUTION; REPEALING ALL ACTS OR PARTS OF ACTS IN CONFLICT HEREWITH."

The title indicates the intention of the act to govern the method and time of distribution by the treasurer. No provision is made for the transmittal of the funds from the court to the treasurer, the only directive of the statute being that, having reached the treasurer's office, they shall be "retained" there until the end of the month, then distributed in the manner required. Section 94-801-1, *supra*, furnishes the sole statutory directive for the handling of these monies from the time of payment into the court until their delivery to the treasurer. It supplies the means by which the money is placed in the treasurer's hands. Chapter 149 provides the passage of the money out of the treasury into the various state, county and city funds which are its ultimate destination.

Chapter 149 does not repeal Section 94-801-1, supra. Repeals by implication are not favored by the courts; a later statute will be held to repeal an earlier one only when they are irreconcilable. The Montana Supreme Court has said:

"To make tenable the claim that an earlier statute was repealed by a later one, the two Acts must be plainly and irreconcilably repugnant to, or in conflict with, each other; must relate to the same subject; and must have the same object in view. (105 Mont. 347, p. 359.)

These two statutes do not deal with the same subject or have the same object in view. Section 94-801-1, supra, deals with the disposition of fines and forfeitures by the courts. Chapter 149 deals with the method and time of payments of certain types of fines by the county treasurer. They can and must function side by side and harmoniously, as both are necessary to insure the proper handling and transmittal of these monies from the time of their collection by the court to the final payment into the appropriate public funds.

It is therefore my opinion that court costs may be deducted from fines collected by district courts from children under eighteen (18) years of age for unlawful operation of motor vehicles.

Very truly yours,
FORREST H. ANDERSON
Attorney General