

FINES, drivers education deduction — COURTS, drivers education deduction from traffic fines — SCHOOLS AND SCHOOL DISTRICTS, drivers education fund — Chapter 214, Laws of 1969.

- HELD: 1. Section 4 (1) (a) provides that four dollars (\$4) of every twenty dollar (\$20) unit of fine actually imposed, and multiples thereof, or twenty percent (20%) of all other fines shall be credited to the drivers education account.**
- 2. The magistrate must indicate to the city or county treasurer the amount from each individual fine to be credited to the drivers education account.**
- 3. Where a defendant serves a part of his fine in jail, there is to be credited to the drivers education account the proper amount of the fine actually paid.**

March 27, 1969

Mr. William B. Sherman
Pondera County Attorney
Conrad, Montana 59425

Dear Mr. Sherman:

You have requested my opinion concerning an interpretation of Chapter 214 of the Montana Session Laws of 1969. This chapter provides the funding for drivers education in Montana.

You have asked the following questions:

1. Under Section 4 (1) (a) what portion of the fine should be credited to the driver education account?
2. Does the court or does the appropriate treasurer determine the amount deducted from the fine for credit to the driver education account?
3. If a defendant serves part of his fine in jail, what amount is credited to the driver education account?

1. Section 4 (1) (a) provides "where a fine is imposed, four dollars (\$4) of every twenty dollars (\$20) of fine imposed or twenty percent (20%) of the fine, whichever is greater," shall be paid into the driver education account. While interpretations of this section could result in some disparity, the intention of the 1969 legislature is clear. Chapter 214 was enacted to eliminate the unconstitutional provisions contained in Chapter 53, Title 75, R.C.M. 1947. Under this chapter the penalty

assessment for driver education was based on a twenty dollar (\$20) unit, i.e., two dollars (\$2) was added to every twenty dollar fine or fraction thereof.

Under Chapter 214 the 1969 legislature intended, in effect, that twenty percent (20%) of all fines be paid to the driver education account. The phrase "four dollars (\$4) of every twenty dollars (\$20) of the fine imposed" applies only to every twenty dollar (\$20) unit of the fine. If the amount of the fine is between the twenty dollar units, the phrase "or twenty percent (20%) of the fine" applies because the amount paid to the driver education fund would be greater than four dollars (\$4). For example, if a fine were fifty dollars (\$50), the amount credited to driver education would be ten dollars (\$10) or twenty percent of fifty dollars (\$50). This ten dollars is greater than the eight dollars which would be credited if the four dollars per twenty dollar unit applied. Similarly, if the fine were less than twenty dollars (\$20), the twenty percent (20%) phrase would apply because there would not have been a twenty dollar (\$20) fine imposed.

The use of this method prevents the injustice which would have been the result under the computation procedure of the unconstitutional statute. Under the former statute, a fine of twenty-one dollars (\$21) would have credited the driver education fund with twice the amount credited when the fine was twenty dollars (\$20). If the present twenty percent (20%) method were not used, a fine of twenty-one dollars (\$21) under the new law would credit eight dollars (\$8) to the driver fund, while a fine of twenty dollars (\$20) would only credit four dollars (\$4) to the fund.

2. Under Section 6 of Chapter 214 the justice or magistrate transmits the "portion of the proceeds from fines specified in Section 4" to the city or county treasurer. The use of the word "portion" indicates that the court must inform the treasurer in some manner what amount of the total fines transmitted should be credited to the driver education account. This is especially true in view of the fact that it is only within the court's knowledge how much to deduct for the driver education account from each individual fine.

3. You have asked what portion of the fine should go to the driver education account when a defendant serves a portion of his fine in jail. Section 4 (1) (b) states in part where "a fine is suspended, in whole or in part, the portion paid to the automobile driver education account in the earmarked revenue fund shall be in accordance with the fine actually imposed." This section should be interpreted to credit the driver education fund with its proportionate share of the fine actually paid. Therefore, if a defendant served part of his fine in jail, the driver education account would only receive twenty percent (20%) of the amount the defendant actually paid to the court.

Therefore, it is my opinion that:

1. The 1969 legislature intended to credit twenty percent (20%) of every traffic fine defined in Chapter 214 of the Montana Session Laws of 1969 to the driver education account.
2. The court in which the fine is paid must inform the appropriate treasurer what portion of the total fines should be credited to the driver education account when those fines are transmitted to the treasurer from the court.
3. If a defendant serves part of his fine in jail, twenty percent (20%) of the fine actually paid by the defendant must be credited to the driver education account.

Very truly yours,

ROBERT L. WOODAHL
Attorney General

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