

**VOLUME NO. 35****Opinion No. 14**

**FINES — Traffic regulation, disposition of; FORFEITURES — Traffic regulation, disposition of; DEPARTMENT OF HIGHWAYS — Scalemen, disposition of fines and forfeitures resulting from notices to appear; SCHOOLS AND SCHOOL DISTRICTS — Traffic education account, fines and forfeitures credited thereto. Sections 32-1123, 32-1124, 32-1125, 32-1131, 32-1632, 32-1639, 75-7902, and 75-7903, R.C.M. 1947.**

- HELD:**
- 1. Fines and forfeitures assessed pursuant to the maximum limits of section 32-1123, R.C.M. 1947, should be deposited in the state general fund. All other fines and forfeitures collected under the remaining provisions of Title 32, chapter 11, R.C.M. 1947, should be deposited in the county general road fund.**
  - 2. A percentage of fines and forfeitures assessed pursuant to the issuance of notices to appear issued by highway scalemen should be deposited in the traffic education account.**

June 11, 1973

Mr. Harold F. Hanser  
Yellowstone County Attorney  
County Courthouse  
Billings, Montana 59101

Attention: Mr. Ernest F. Boschert  
Deputy County Attorney

Dear Mr. Hanser:

You have requested my opinion on the following questions:

1. What is the disposition of moneys collected from fines and bond forfeitures imposed under section 32-1122 through section 32-1130?
2. Should the percentage of fines or forfeitures for driver education be transmitted to the county treasurer on "notices to appear" issued by Department of Highways scalemen?

Your first question involves a consideration of statutes codified under Title 32, chapter 11, Revised Codes of Montana, 1947, which relates to the regulation of traffic and speed on state roads. Sections 32-1122 through 32-1130, R.C.M. 1947, deal specifically with size and weight regulation and the enforcement thereof.

There are two statutory provisions contained in the whole of Title 32, chapter 11, *supra*, which specify the disposition of fines collected pursuant to such chapter. Section 32-1125, R.C.M. 1947, which states amounts collectible for particular violations, provides in part:

All fines and forfeitures shall be remitted monthly by the county treasurer to the state treasurer **for deposit in the state general fund.** (Emphasis supplied)

Section 32-1131, R.C.M. 1947, dealing generally with the disposition of fines, states:

Any and all fines collected for the violation of any of the provisions of this act shall belong to the general road fund of the county, and shall, immediately after their collection, **be paid over by the court or magistrate collecting the same to the county treasurer for the use and benefit of that fund**, except for that portion of the fines, as provided for in section 4 [75-5304] of this act, which the county treasurer shall transmit to the state treasurer of Montana and by him credited to the automobile driver education account in the earmarked revenue fund. (Emphasis supplied)

Thus, it would appear that there are two statutes within Title 32, chapter 11, *supra*, which treat the same subject but which are conflicting in terms of their directive. There is a well-established principle of statutory construction which is

of assistance in such situations. This principle in effect provides that statutes which are in *pari materia*, that is, relating to the same subject matter, should be construed together so that, if possible, effect may be given to both. In this regard see **State v. Mills**, 81 Mont. 86, 261 P. 885 (1927); **Register Life Ins. Co. v. Kenniston**, 99 Mont. 191, 43 P.2d 251 (1935). Applying the principle of *pari materia* to the instant consideration, it would appear that sections 32-1125 and 32-1131, *supra*, are not conflicting, but instead relate to different situations.

Those statutes contained in Title 32, chapter 11, *supra*, have varying legislative histories. Section 32-1131, *supra*, was originally enacted as section 1, Chapter 10 of Chapter 72, Laws of 1913. Further, it appears to have been the only statute relating to the disposition of fines contained within the provisions of Title 32, chapter 11, until the adoption of section 32-1125. Section 32-1123, R.C.M. 1947, relating to maximum dimensions and weights of motor vehicles, section 32-1124, providing that violation of 32-1123 constitutes a misdemeanor, and 32-1125 were enacted as sections 2, 3 (a) and 3 (b) respectively of Chapter 123, Laws of 1947. Section 32-1125 specifically provides that the penalties assessed pursuant thereto are based upon the maximum weight limits permitted under section 32-1123. As such, the disposition of fines paragraph of section 32-1125 would relate only to those fines listed therein and assessed in accordance with the maximum limits established by section 32-1123.

With reference to your second question, there are a number of statutory provisions which must be examined. Section 75-7902, R.C.M. 1947, provides in part:

There is hereby established a traffic education account in the treasury of the state of Montana. There shall be paid into this account a portion of the fines assessed and bails forfeited on all offenses involving a violation of a state statute or a city ordinance relating to the operation or use of motor vehicles, except offenses relating to parking of vehicles, in the following amounts: ...

Section 75-7903 states in part:

The portion of the proceeds from fines and bail forfeitures which are to be deposited in the traffic education account shall be transmitted to the city or county treasurer, as the case may be, by the court collecting them, in the manner and at the times that fines and bail forfeitures are transmitted to such treasurers under law. The court shall indicate what portion of each fine is to be credited to the traffic education account.

The requirement of section 75-7902, *supra*, is clearly to require that specified percentages of **all** fines and bail forfeitures involving motor vehicle use or operation, except those relating to parking violations, be deposited with the traffic education account. The question, then, necessarily arises as to whether department of highway scalemen, in issuing notices to appear, exercise authority which might result in the assessment of fine or forfeiture of bail relative to motor vehicle operation or use within the purview of section 75-7902. In this regard, section 32-1632, R.C.M. 1947, provides:

The state highway commission is hereby empowered to appoint employees as peace officers to carry out the provisions expressly set forth in this act. Such employees so selected shall include only the gross vehicle weight division supervisor, scale supervisor, and scalemen. Each employee so appointed shall be issued a certificate of appointment and execute an oath of office which shall be entered into the records of the commission.

Pursuant to the provisions of section 32-1639, R.C.M. 1947, authorized employees of the highway commission are given authority to make arrests for violations of certain statutory provisions. A notice to appear is defined by section 95-601 (d), R.C.M. 1947, as "... a written direction issued by a peace officer that a person appear before a court at a stated time and place to answer an offense set forth therein." Based upon the foregoing statutory provisions, it would appear that authorized highway scalemen, in issuing notices to appear, do exercise authority which may indeed result in the assessment of a fine or forfeiture of bail concerning a violation of motor vehicle laws. As such, a statutory percentage of any fine or forfeiture of bail resulting from the issuance of a notice to appear by a highway scaleman acting within the scope of his statutory authority, should be deposited in the traffic education account.

**THEREFORE, IT IS MY OPINION, based upon the foregoing discussion:**

1. Fines and forfeitures assessed in accordance with the maximum limits established by section 32-1123, supra, and specified by section 32-1125, supra, should be deposited in the state general fund. All other fines or forfeitures collected pursuant to the remaining statutory requirements of Title 32, chapter 11, should be deposited to the county general road fund as more particularly provided by section 32-1131, supra.

2. A percentage of fines and forfeitures resulting from the issuance of notices to appear by highway scalemen should be transmitted to the county treasurer for deposit in the traffic education account as more specifically provided by sections 75-7902 and 75-7903, supra.

Very truly yours,

**ROBERT L. WOODAHL**  
Attorney General