

VOLUME NO. 36

Opinion No. 114

JUSTICE COURT — FEES — Collection when no fine received; Section 25-310, Revised Codes of Montana 1947.

HELD: A justice of the peace may not withhold or collect for fees or court costs, \$7.50 from any criminal action filed in his court, unless such court costs or fees are withheld or collected from fines or forfeitures pursuant to §25-310, R.C.M. 1947.

Mr. Robert L. Deschamps, III
Missoula County Attorney
Courthouse
Missoula, MT 59801

Dear Mr. Deschamps:

You have requested my opinion concerning whether a justice of the peace may withhold \$7.50 for court costs in various types of cases where no fine is received.

The authority for justices of the peace to collect court costs in criminal actions is found in §25-210, R.C.M. 1947. As originally enacted by Section 1, Chapter 289, Laws of 1973, this statute read:

The following fees shall be collected by justices of the peace which shall be collected from fines and forfeitures received by justices of the peace:

- (1) for services rendered where there is a plea of guilty, or forfeiture of a bond, not vacated, seven dollars and fifty cents (\$7.50);
- (2) for all services rendered where there is a trial, fifteen dollars (\$15).

As amended by Section 5, Chapter 420, Laws of 1975, this statute reads:

The following court costs shall be withheld by justices of the peace from fines and forfeitures in applicable criminal actions:

- (1) for each action filed seven dollars and fifty cents (\$7.50);
- (2) where there is a trial, an additional seven dollars and fifty cents (\$7.50).

In both versions of the statute, the clear statutory language directs that the court costs (or fees) in question shall be "collected from" (1973 version) or "withheld ... from" (1975 version) fines and forfeitures. The word "from" as used in both versions of the statute clearly indicates that court costs shall come from the fines and forfeitures. Therefore, if no fines or forfeitures result from a criminal action before a justice of the peace, the statute contains no authorization to collect or withhold such fees. Neither the courts nor the attorney general may add language to the statute so as to authorize the collection of court costs from some source other than the fines or forfeitures. §93-401-15, R.C.M. 1947. **Montana Deaconess Hospital v. Cascade County**, 164 Mont. 256, 521 P.2d 203 (1974).

There is a statutory construction presumption that the legislature intended to make some change in the law through the amendments to §25-310, R.C.M. 1947 in 1975. **State ex rel. Dick Irvin v. Anderson**, 164 Mont. 513, 525 P.2d 564 (1974). The language regarding the amount to be collected by the justice of the peace was changed to avoid ambiguity as to the amount to be collected for trials. The other language clarified the legislative intent by removing excess language but leaving the basic intent of the statute unchanged.

THEREFORE, IT IS MY OPINION:

A justice of the peace may not withhold or collect for fees or court costs, \$7.50 from any criminal action filed in his court, unless such court costs or fees are withheld or collected from fines or forfeitures pursuant to §25.310, R.C.M. 1947.

Very truly yours,
ROBERT L. WOODAHL
Attorney General