

VOLUME NO. 38

OPINION NO. 61

TRAFFIC - Traffic offenses, statutes governing payment of fines;
COURTS - Justice Courts, traffic offenses, statutes governing payment of fines;
FINES - Traffic offenses, Justice Courts, statutes governing payment of fines;
MONTANA CODE ANNOTATED - Sections 46-19-102, 61-8-711.

HELD: Section 61-8-711, MCA, governs the penalties that may be imposed upon persons convicted of traffic offenses.

7 January 1980

Ronald W. Smith, Esq.
Hill County Attorney
Hill County Courthouse
Havre, Montana 59501

Dear Mr. Smith:

You have requested my opinion on the following question:

When a person convicted of a traffic offense is sentenced to pay a fine, does 61-8-711 or 46-19-102, MCA, govern?

Section 61-8-711, MCA, is part of the traffic regulation statutes, and provides maximum fines and periods of imprisonment for traffic offenses depending upon whether the offense is the defendant's first, second or third within one year. Subsection (3) provides that upon failure to pay a fine, the defendant is to be imprisoned in the county jail for a period of one day for each two dollars of the fine. Section 46-19-102, MCA, is part of the general criminal procedure code, and provides that if a judgment is a fine and imprisonment until the fine is paid, the defendant is to be held in custody for a period not to exceed one day for each ten dollars of the fine.

Your letter states that some Justices of the Peace are applying the two-dollar-a-day imprisonment of section 61-8-711, MCA, to traffic offenders, while others are applying the ten-dollar-a-day imprisonment of section 46-19-102, MCA, to similar offenses. The result is that persons convicted of the same offense and subjected to the same fine are serving greatly disparate jail terms depending upon which statute is being applied.

First, it is clear that section 61-8-711, MCA, applies to all traffic offenses to the exclusion of section 46-19-102, MCA. This results from the fact that when a general and a particular statute on the same subject are inconsistent, the particular statute governs. § 1-2-102, MCA.

The situation you have raised, however, reveals a more fundamental problem that you should consider. If the failure to pay the fine is based upon indigency, constitutional issues arise. In Williams v. Illinois, 399 U.S. 235 (1970); Tate v. Short, 401 U.S. 395 (1971); Morris v. Schoonfield, 399 U.S. 508 (1970); and State ex rel. Kotwicki v. District Court, 166 Mont. 335, 532 P.2d 694 (1975), the courts have recognized the infirmity of imposing a fine as a sentence and then converting it into a jail term simply because the defendant is indigent and cannot forthwith pay the fine in full.

The implications of these holdings on the present situation are clear, and should be carefully considered whenever a defendant is jailed for non-payment of a fine.

THEREFORE, IT IS MY OPINION:

Section 61-8-711, MCA, governs the penalties that may be imposed upon persons convicted of traffic offenses.

Very truly yours,

MIKE GREELY
Attorney General