

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 63

COURTS - Distribution of fees, fines, penalties, forfeitures;
COURTS, JUSTICE - Distribution of charge created by section 46-18-236, MCA;
CRIMINAL LAW AND PROCEDURE - Distribution of charge created by section 46-18-236, MCA;
FEES - Charge created by section 46-18-236, MCA, not a fee;
JUDGES - Distribution of fees, fines, penalties, forfeitures;
TREASURER, STATE - Distribution of fees, fines, penalties, forfeitures;
MONTANA CODE ANNOTATED - Sections 3-10-601, 3-10-601(1), 7-4-2502, 7-4-2503, 7-4-2505, 46-18-236;
MONTANA LAWS OF 1987 - Chapter 557;
MONTANA LAWS OF 1986 - Chapter 17, section 3;
MONTANA LAWS OF 1985 - Chapter 719, section 1.

HELD: The charge imposed upon criminal defendants by section 46-18-236, MCA, is a penalty or a forfeiture and is to be collected and distributed pursuant to section 3-10-601(2), (3), and (4), MCA.

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8 February 1988

Wm. Nels Swandal
Park County Attorney
Park County Courthouse
Livingston MT 59047

Dear Mr. Swandal:

You have requested my opinion on a question which I have phrased as follows:

What is the proper disposition of funds collected by a justice court pursuant to section 46-18-236, MCA?

As your question arises from the recent amendments to sections 46-18-236 and 3-10-601, MCA, some discussion of the history of these statutes may be of assistance.

In 1985, the Legislature enacted Senate Bill 116, which revised the salary structure for prosecuting attorneys, required the State to pay a portion of the salaries of deputy county attorneys, and provided for the imposition of a charge to be assessed upon persons who are convicted of a crime or who forfeit bail or bond, amending sections 7-4-2502, 7-4-2503, and 7-4-2505, MCA, and creating section 46-18-236, MCA. The latter section provides in part:

(1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a defendant upon his conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

- (a) \$10 for each misdemeanor charge; and
- (b) the greater of \$20 or 10% of the fine levied for each felony charge.

Subsection (2) provides for the waiver of the charge by the court in hardship cases. The section specifically stipulates that the charge imposed by the section is not a fine. § 46-18-236(3), MCA.

The original disposition of funds collected by justice courts pursuant to section 46-18-236, MCA, was to the county treasurer, who could retain up to 10 percent of

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the funds with the balance to be remitted to the state treasurer for deposit to the state general fund. 1985 Mont. Laws, ch. 719, § 1. In a special session of the Legislature in 1986, the statute was amended to direct that all funds collected as a result of the charge should be retained by the county treasurer and utilized for salaries in the office of the county attorney, with any excess to be utilized for other county salaries. 1986 Mont. Laws, ch. 17, § 3. Finally, in 1987, the statute was amended to exempt justice courts from the disposition scheme set out in section 46-18-236, MCA. This amendment was a part of a comprehensive bill, House Bill 740, the purpose of which was stated in the title as follows:

AN ACT TO RELIEVE JUSTICES OF THE PEACE FROM OVERLY BURDENSOME BOOKKEEPING AND OTHER ADMINISTRATIVE DUTIES IN REGARD TO FINES, PENALTIES, AND FORFEITURES PAID IN THEIR COURTS, TO REVISE THE METHOD OF DISTRIBUTING THE FINES, PENALTIES, AND FORFEITURES[.]

1987 Mont. Laws, ch. 557. In lieu of numerous directions found in provisions scattered throughout the Montana Code Annotated with respect to the transmittal of moneys collected by justice courts, distribution is now governed by section 3-10-601, MCA.

Section 3-10-601(1), MCA, requires the justice of the peace to collect the fees prescribed by law and to deposit them into the county treasury to be credited to the county general fund. The section further provides that fines, penalties, and forfeitures are to be paid to the county treasurer, who then remits half to the state treasurer for distribution among several distinct funds. § 3-10-601(2), (3), (4), MCA.

The answer to your question concerning the disposition of the charge created by section 46-18-236, MCA, thus depends upon whether the charge is in the nature of a fee or in the nature of a fine, penalty, or forfeiture. As above noted, the section expressly states the charge is not a fine. A "fine" is defined as "[a] pecuniary punishment imposed by lawful tribunal upon person convicted of crime or misdemeanor" or "[a] pecuniary penalty." Black's Law Dictionary 569 (5th ed. 1979). Similarly, a "penalty" is "a sum of money which the law exacts payment of by way of punishment for doing some act which is prohibited or for not doing some act which is required to be done." Id. at 1020 (citing Hidden Hollow Ranch v. Collins, 146 Mont. 321, 326, 406 P.2d 365, 368 (1965)). A "forfeiture" is "loss of some right or property as a penalty for some illegal act." Black's

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Law Dictionary 585. The concept of punishment is common to fines, forfeitures, and penalties. In contrast, a "fee" is "[a] charge fixed by law for services of public officers or for use of a privilege under control of government." Id. at 553. The charge created by section 46-18-236, MCA, is imposed solely upon those who are convicted of a criminal offense or who forfeit bond or bail. The charge, therefore, fits most logically within the definition of a penalty or a forfeiture.

THEREFORE, IT IS MY OPINION:

The charge imposed upon criminal defendants by section 46-18-236, MCA, is a penalty or a forfeiture and is to be collected and distributed pursuant to section 3-10-601(2), (3), and (4), MCA.

Very truly yours,

MIKE GREELY
Attorney General