

OPINION NO. 93-015**Syllabus:**

The provisions of R.C. Chapter 2925 that relate to the disposition and use of forfeited bail do not preclude a court or magistrate from remitting all or a portion of forfeited bail pursuant to R.C. 2937.39.

**To: Stephanie Tubbs Jones, Cuyahoga County Prosecuting Attorney,
Cleveland, Ohio**

By: Lee Fisher, Attorney General, July 29, 1993

You have asked whether the provisions of R.C. Chapter 2925 that relate to the disposition and use of forfeited bail preclude the remission of forfeited bail pursuant to R.C. 2937.39. Your question arises from the fact that several sections within R.C. Chapter 2925 mandate that if an individual forfeits his bail, fifty percent of the forfeited bail is to be paid "to the county, township, municipal corporation, park district, as created pursuant to section 511.18

or 1545.01 of the Revised Code, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender," R.C. 2925.03(J)(1), and fifty percent is to be disbursed to the executive director of the State Board of Pharmacy, R.C. 3719.21. *See, e.g.*, R.C. 2925.02(D)(3), (4); R.C. 2925.11(E)(3), (4); R.C. 2925.12(D)(3), (4); R.C. 2925.13(D)(3), (4); R.C. 2925.14(G)(3), (4); R.C. 2925.22(C)(3), (4); R.C. 2925.23(G)(3), (4); R.C. 2925.31(C)(3), (4); R.C. 2925.32(F)(3), (4); R.C. 2925.36(D)(3), (4); R.C. 2925.37(L)(3), (4); *see also* R.C. 2925.03(K) (if a person forfeits his bail, one hundred percent of the forfeited bail is paid pursuant to R.C. 2925.03(J)). These provisions, thus, provide that upon the declaration of forfeiture, the magistrate or clerk of court is required to disburse the forfeited bail to the law enforcement agencies that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender, and to the executive director of the State Board of Pharmacy. *See generally* R.C. 2937.36(A) (upon declaration of forfeiture, a magistrate or clerk of the court adjudging forfeiture "shall proceed forthwith to deal with the sum deposited as if the same were imposed as a fine for the offense charged and distribute and account for the same accordingly").

After bail has been declared forfeited, however, a court or magistrate pursuant to R.C. 2937.39 has the discretion to remit all or a portion of the forfeited bail:

After judgment has been rendered against surety or after securities sold or cash bail applied, the court or magistrate, on the appearance, surrender, or rearrest of the accused on the charge, may remit all or such portion of the penalty as it deems just *and in the case of previous application and transfer of cash or proceeds, the magistrate or clerk may deduct an amount equal to the amount so transferred from subsequent payments to the agencies receiving such proceeds of forfeiture until the amount is recouped for the benefit of the person or persons entitled thereto under order or remission.* (Emphasis added.)

See State v. Patton, 60 Ohio App. 3d 99, 101, 573 N.E.2d 1201, 1203 (Lucas County 1989). Thus, under R.C. 2937.39, a court or magistrate may remit all or a portion of forfeited bail that has previously been disbursed to an agency entitled to receive forfeited bail.

In your letter, you suggest that R.C. 2937.39 conflicts with the provisions of R.C. Chapter 2925 relating to the distribution of forfeited bail. Accordingly, you have questioned whether the provisions of R.C. Chapter 2925 which mandate that forfeited bail is to be disbursed to certain law enforcement agencies and to the executive director of the State Board of Pharmacy prevail as an exception to the bail remission provision of R.C. 2937.39.

Construction of R.C. 2937.39 and the Provisions of R.C. Chapter 2925 that Relate to the Disposition and Use of Forfeited Bail

An examination of R.C. 2937.39 and the provisions of R.C. Chapter 2925 that relate to the disposition and use of forfeited bail reveals that both concern the same subject matter -- the application of forfeited bail. It is a fundamental rule of statutory interpretation that statutes relating to the same subject are to be compared and, if possible, brought into harmony. *Bobb v. Marchant*, 14 Ohio St. 3d 1, 469 N.E.2d 847 (1984); *Sentinel Sec. Sys. v. Medkeff*, 36 Ohio App. 3d 86, 521 N.E.2d 7 (Summit County 1987); *see also* R.C. 1.51 ("[i]f a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both").

As noted above, the provisions of R.C. Chapter 2925 provide that forfeited bail is to be disbursed to the law enforcement agencies that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender, and to the executive director of the State

Board of Pharmacy, while R.C. 2937.39 provides that a court or magistrate may remit all or such portion of forfeited bail that has been disbursed to an agency entitled to the forfeited bail. No provision within R.C. Chapter 2925, however, expressly prohibits a court or magistrate from remitting forfeited bail after such bail has been disbursed to a law enforcement agency or the State Board of Pharmacy. Insofar as no provision within R.C. Chapter 2925 concerns the remission of forfeited bail, there does not appear to be any direct conflict between R.C. 2937.39 and the provisions of R.C. Chapter 2925 that relate to the disposition and use of forfeited bail.

Moreover, there is no manifest legislative intent that the provisions of R.C. Chapter 2925 relating to the disbursement of forfeited bail prevail over the bail remission provision of R.C. 2937.39. Rather, it appears that the General Assembly intended to grant a court or magistrate the discretionary power to remit all or such portion of forfeited bail even if such forfeited bail had been previously disbursed to an agency. R.C. 2937.39 expressly provides that, where forfeited bail has been disbursed to an agency, a magistrate or clerk may deduct an amount equal to the amount disbursed from subsequent disbursements to such agency until the amount is recouped for the benefit of the person entitled thereto. The language of R.C. 2937.39 thus clearly suggests that the disbursement of forfeited bail to an agency does not preclude its subsequent remission by a court or magistrate. Accordingly, the provisions of R.C. Chapter 2925 that relate to the disposition and use of forfeited bail do not preclude a court or magistrate from remitting all or a portion of forfeited bail pursuant to R.C. 2937.39. See 1959 Op. Att'y Gen. No. 43, p. 17; 1958 Op. Att'y Gen. No. 2684, p. 535; cf. *Metschan v. Grant County*, 36 Or. 117, 119, 58 P. 80, 81 (1899) (an individual should not be denied remission of forfeited bail "because the money which he seeks to recover could only be used for some special and designated purpose").

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised, that the provisions of R.C. Chapter 2925 that relate to the disposition and use of forfeited bail do not preclude a court or magistrate from remitting all or a portion of forfeited bail pursuant to R.C. 2937.39.