

402.

HIGHWAY PATROLMAN, STATE — APPREHENSION OR ARREST OF PERSON TRIED IN COURT OF COMMON PLEAS—FINES COLLECTED OR MONEYS ARISING FROM FORFEITED BONDS—ONE-HALF SHALL BE PAID INTO STATE TREASURY, ONE-HALF INTO COUNTY TREASURY—SECTION 1181-5 G. C.

SYLLABUS:

Under the provisions of section 1181-5, General Code, all fines collected from, or moneys arising from bonds forfeited by persons apprehended,

hended or arrested by state highway patrolmen and tried in a Court of Common Pleas, shall be paid one-half to the state treasury and one-half into the county treasury.

COLUMBUS, OHIO, April 7, 1939.

HON. H. LLOYD JONES, *Prosecuting Attorney, Delaware, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

“In your opinion does Section 1181-5, General Code, have application to a prosecution by indictment in the Common Pleas Court?”

Our case is briefly this, the defendant was arrested by a highway patrolman on a manslaughter charge. He was indicted and pleaded guilty in the Common Pleas Court to failure to stop after an accident.

1937 O. A. G. passes on the question but makes no distinction between a justice or mayor's court and the Common Pleas Court.

If this Section does apply to the Common Pleas Court what distribution should be made of the fine? Is one-half of the fine payable to the treasurer of the City in which the Common Pleas Court is located?”

Section 1181-5, General Code, provides:

“All fines collected from, or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen shall be paid one-half into the state treasury and one-half to the treasury of the incorporated city or village where such case may be prosecuted. Provided, however, if such prosecution is in a trial court outside of an incorporated city or village such money shall be paid one-half into the county treasury. Such money so paid into the state treasury shall be credited to the ‘state highway maintenance and repair fund’ and such money so paid into the county, city or village treasury shall be deposited to the same fund and expended in the same manner as is the revenue received from the registration of motor vehicles.

The trial court shall make remittance of such money as prescribed by law and at the same time as such remittance is made of the state's portion to the state treasury such trial court shall notify the superintendent of the state highway patrol of the case or cases and the amount covered by such remittance.

All salaries and expenses of members of the state highway patrol and all expenditures for vehicles, equipment, supplies and salaries of clerical forces and all other expenditures for the

operation and maintenance of the patrol shall be paid by the treasurer of state out of the state highway maintenance and repair fund.”

This section provides for the disposition of fines and penalties assessed and collected in cases originated by state highway patrolmen. Where an inconsistency or incompatibility exists between the provisions of this section and section 3056 of the General Code, section 1181-5 controls, inasmuch as it is later in time and deals with a special matter. In the opinion to which you refer in your letter, Opinions of the Attorney General for 1937, No. 713, the second branch of the syllabus reads as follows:

“All fines collected from or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen shall be paid one-half to the state treasury and one-half to the treasury of the incorporated city or village or county where such case may be prosecuted.”

The specific question decided in that opinion arose because several of the municipalities were attempting to withhold part of the fines under the authority of the former statutes. (Section 3056 of the General Code.) It was held that section 1181-5, General Code, controls and that fines collected from persons apprehended or arrested by state highway patrolmen shall be paid one-half to the state treasury and one-half to the treasury of the incorporated city, or village, or county where such case may be prosecuted.

The specific question presented by your inquiry is not answered in the 1937 opinion, to-wit: If the case presented by the state highway patrolman is prosecuted in a Common Pleas Court, does the same ruling apply, or should the one-half payable to the municipality be paid to the county instead?

In connection with the 1937 opinion, there should also be considered an earlier opinion rendered by this office, found in the Opinions of the Attorney General for 1934, page 794, the syllabus of which reads as follows:

“1. All fines collected from, or moneys arising from, bonds forfeited by persons apprehended or arrested by state highway patrolmen and tried before a *justice of the peace* of a township which extends beyond the territorial limits of a city or incorporated village, should be paid one-half into the state treasury and one-half into the county treasury, regardless of the fact that the trial is held at the office of the justice of the peace, whose office is located within the geographical limits of a city or incorporated village within the township.

2. In the event the boundaries of a township and those of

a city or village are coextensive, the fines collected from, or moneys arising from, bonds forfeited by persons apprehended or arrested by state highway patrolmen and tried before a justice of the peace should be paid one-half into the state treasury and one-half into the county treasury." (Italics the writer's.)

In the earlier opinion, the then Attorney General held that fines collected from persons apprehended or arrested by state highway patrolmen and assessed by a justice of the peace shall be paid one-half into the state treasury and one-half into the county treasury, although the office of the justice of the peace may be located within the geographical limits of the city or incorporated village. I am of the opinion that the rule applied to fines assessed by justices of the peace is applicable to similar cases tried in a Court of Common Pleas.

The language of section 1181-5, General Code, while using the words "all fines", must be construed in connection with the latter part of the sentence which reads: "one-half to the treasury of the incorporated city or village where such cases may be prosecuted". This obviously relates to those cases only which are tried in the courts of such village or city. This is also evident from the language of the next sentence which reads: "If such prosecution is in a trial court outside of the incorporated city or village, such money shall be paid one-half into the county treasury". In the present case, it is stated by you that the case brought by the state highway patrolman was tried in a Court of Common Pleas which, in a jurisdictional sense, means outside the municipality, or other than a municipal court.

It is therefore my opinion, in specific answer to your question, that, under the provisions of section 1181-5, General Code, all fines collected from, or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen and tried in a Court of Common Pleas, shall be paid one-half to the state treasury and one-half into the county treasury.

Respectfully,

THOMAS J. HERBERT,
Attorney General.