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MONEY COLLECTED BY A CLERK OF MUNICIPAL COURT FROM A BAIL BOND FORFEITURE WHERE THE ARREST WAS NOT MADE BY A STATE TROOPER, SHOULD BE DISTRIBUTED ACCORDING TO SECTION 1901.31, REVISED CODE, AND SECTION 4513., REVISED CODE, EXCEPT THE CLERK MAY SATISFY THE AMOUNT OF THE ACCRUED COST IN CASE OUT OF THE FORFEITED BAIL BOND BEFORE MAKING DISTRIBUTION—FINES PAID INTO THE STATE TREASURY, SUBJECT TO PAYMENTS TO THE COUNTY LAW LIBRARY—§§1901.31, 4513.35, R.C., OPINION 1132, OAG, 1952, OPINION 5975, OAG, 1955, §2937.36, R.C.

## SYLLABUS:

1. Money collected by a clerk of a municipal court from a bail bond forfeiture under Sections 4511.01 to 4511.78, inclusive, 4511.99, and 4513.01 to 4513.37, inclusive, Revised Code, where the arrest was not made by a state highway patrolman, should, under Section 2937.36, Revised Code, be distributed as provided in Sections 1901.31 and 4513.35, Revised Code, as if the amount of the forfeiture were imposed as a fine for the offense charged, except that the clerk may satisfy the amount of the accrued costs in the cash out of the amount of the bail before making such distribution.

2. Under division (F) of Section 1901.31 and under Section 4513.35, Revised Code, fines collected under Sections 4511.01 to 4511.78, inclusive, 4511.99, and 4513.01 to 4513.37, inclusive, Revised Code, in other than state highway patrol cases, are paid into the county treasury, subject to payments to the county law library under Sections 3375.50 and 3375.53, Revised Code.

Columbus, Ohio, August 28, 1962

Hon. James A. Rhodes, Auditor of State  
State House, Columbus, Ohio

Dear Sir:

In your request for my opinion you pose a question as follows:

“Where an arrest is made by officers other than state highway patrolmen, and a bond is forfeited in a municipal court, under Sections 4511.01 to 4511.78, inclusive, 4511.99, and 4513.01 to 4513.37, inclusive, of the Revised Code; how is the clerk of the municipal court required to distribute the proceeds of the forfeiture?”

Section 1901.31, Revised Code, deals with the duties of a clerk of a municipal court. Division (F) of that section reads as follows:

“(F) The clerk of a municipal court shall receive and collect all costs, fees, fines, penalties, bail, and other moneys payable to the office or to any officer of the court and issue receipts therefor, and shall each month disburse the same to the proper persons or officers and take receipts therefor, provided that fines received for violation of municipal ordinances shall be paid into the treasury of the municipal corporation whose ordinance was violated *and to the county treasury all fines collected for the violation of state laws, subject to sections 3375.50 and 3373.53 of the Revised Code.* Moneys deposited as security for costs shall be retained pending the litigation. He shall keep a separate account of all receipts and disbursements in civil and criminal cases, which shall be a permanent public record of the office, as required by the bureau of inspection and supervision of public offices, and on the expiration of his term such records shall be

delivered to his successor. He shall have other powers and duties as are prescribed by rule or order of the court.” (Emphasis added)

Your question is concerned with bond forfeitures arising in motor vehicle cases under Sections 4511.01 to 4511.78, inclusive, 4511.99, and 4513.01 to 4513.37, inclusive, Revised Code (not state highway patrol cases). Section 4513.35, Revised Code, provides how *fin*es collected under those sections are to be distributed. Said Section 4513.35 reads as follows:

“All *fin*es collected under sections 4511.01 to 4511.78, inclusive, 4511.99, and 4513.01 to 4513.37, inclusive, of the Revised Code, shall be paid into the county treasury and, with the exception of that portion distributed under section 3375.53 of the Revised Code, shall be placed to the credit of the fund for the maintenance and repair of the highways within such county, provided that all fines collected from, or moneys arising from bonds forfeited by, persons apprehended or arrested by state highway patrolmen shall be distributed as provided in section 5503.04 of the Revised Code.” (Emphasis added)

In Opinion No. 1132, Opinions of the Attorney General for 1952, page 107, the third paragraph of the syllabus reads as follows:

“In cases involving a violation of a state law, to the extent that statutory provision is not otherwise made for the disposition of moneys coming into the custody of the clerk of a municipal court, including costs, fees, penalties, bail and other moneys payable to any officer of the court, the clerk should, under the provisions of Section 4300, General Code, pay such moneys into the treasury of the most populous city in the territory within which such court exercises jurisdiction.”

In Opinion No. 5975, Opinions of the Attorney General for 1955, page 610, the first paragraph of the syllabus reads as follows:

“Subject to the provisions of Section 3375.50, Revised Code, relative to payments for the support of the county law library, and except where otherwise specifically directed by statute, all moneys coming into the hands of the clerk of a municipal court from bail bond forfeitures shall be paid pursuant to Section 733.46, Revised Code, to the treasurer of the municipality in which such court is established. Opinion No. 1132, Opinions of the Attorney General for 1952, page 107, confirmed and followed.”

In Opinion Nos. 1132 and 5975, *supra*, it was noted that both Section 1901.31 and Section 4513.35, *supra*, provide for the distribution of moneys

collected as *fin*es, but neither section provides for the distribution of moneys collected from bond forfeitures. Thus, in both of said opinions, it was held that the general provision pertaining to funds received by a municipal corporation should apply to such bond forfeiture moneys. That general provision is Section 733.46, Revised Code, formerly Section 4300, General Code, and reads :

“The treasurer of a municipal corporation shall receive and disburse all funds of the municipal corporation and such other funds as arise in or belong to any department or part of the municipal corporation.”

Since the issuance of the 1952 and 1956 opinions above referred to, a new provision of law has been enacted which is here pertinent. Effective January 1, 1960, Section 2937.36, Revised Code, reads in part :

“Upon declaration of forfeiture, the magistrate or clerk of the court adjudging forfeiture shall proceed as follows :

“(A) As to each bail, he 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 provided that prior to so doing, he may satisfy accrued costs in the case out of the fund.

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The above provision of law deals specifically with the distribution of moneys arising from bail forfeitures, and clearly provides that such should be distributed as would be fines for the same offenses. I believe that this special provision is controlling as to the distribution of bail bond forfeitures.

Division (F) of Section 1901.31, *supra*, provides that fines collected for the violation of state laws, be paid into the county treasury, subject to sections 3375.50 and 3375.53, Revised Code. Section 4513.35, *supra*, provides that fines collected under Sections 4511.01 to 4511.78, inclusive, 4511.99, and 4513.01 to 4513.37, inclusive, Revised Code, be paid into the county treasury. (Sections 3375.05 and 3375.53, Revised Code, require that a certain part of moneys collected on forfeited bail bonds be paid to the board of trustees of the county law library association.)

Accordingly, in view of the provisions of Section 2937.36, *supra*, moneys collected on bail bond forfeitures for the offenses in question should, subject to Sections 3375.50 and 3375.53, Revised Code, be paid into the county treasury. In this regard, however, it will be noted that under Section 2937.36, *supra*, the clerk may satisfy the amount of the

accrued costs in the case out of the amount of bail before making such payment. (Opinion No. 1372, Opinions of the Attorney General for 1960, page 353; Opinion No. 1466, Opinions of the Attorney General for 1960, page 415.)

As noted earlier, this opinion is not concerned with cases where arrests are made by state highway patrolmen, such being governed by the special provisions of Section 5503.04, Revised Code.

In conclusion, it is my opinion and you are advised:

1. Money collected by a clerk of a municipal court from a bail bond forfeiture under Sections 4511.01 to 4511.78, inclusive, 4511.99, and 4513.01 to 4513.37, inclusive, Revised Code, where the arrest was not made by a state highway patrolman, should, under Section 2937.36, Revised Code, be distributed as provided in Sections 1901.31 and 4513.35, Revised Code, as if the amount of the forfeiture were imposed as a fine for the offense charged, except that the clerk may satisfy the amount of the accrued costs in the case out of the amount of the bail before making such distribution.

2. Under division (F) of Section 1901.31, and under Section 4513.35, Revised Code, fines collected under Sections 4511.01 to 4511.78, inclusive, 4511.99, and 4513.01 to 4513.35, inclusive, Revised Code, in other than state highway patrol cases, are paid into the county treasury, subject to payments to the county law library under Sections 3375.50 and 3375.53, Revised Code.

Respectfully,

MARK McELROY

Attorney General