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1. JUSTICE OF THE PEACE—CASE, VIOLATION, STATE TRAFFIC LAWS—CASH BOND FORFEITED—RECORDS TRANSMITTED TO COMMON PLEAS COURT—CLERK SHOULD ENTER ON APPEARANCE DOCKET, COMMON PLEAS COURT—SECTIONS 6307 ET SEQ., 13433-8, 13435-13 GC.
2. CLERK OF COURTS SHOULD PAY INTO COUNTY TREASURY, CREDIT TO GENERAL REVENUE FUND, ANY FORFEITED BONDS TRANSMITTED—JUSTICE OF PEACE—OAG 1937, PAGE 1715, APPROVED AND FOLLOWED.
3. CASH BOND FORFEITED BY JUSTICE OF PEACE—ACCUSED APPREHENDED OR ARRESTED BY STATE HIGHWAY PATROLMAN—BOND TRANSMITTED BY JUSTICE OF PEACE TO CLERK OF COURTS—CLERK SHOULD PAY PROCEEDS OF BOND IN EQUAL PARTS TO STATE TREASURER AND TO COUNTY TREASURER—SECTION 1183-4 GC.

SYLLABUS:

1. Where a justice of the peace, in a case involving an alleged violation of the state traffic laws, Section 6307-1, et seq., General Code, declares a cash bond forfeited due to the failure of the accused to appear, and transmits such cash bond with a transcript of his proceedings in the case, as required by Section 13433-8, General Code, to the clerk of the Common Pleas Court, such clerk should enter the same on the appearance docket of such court as provided in Section 13435-13, General Code.

2. Except as otherwise provided by law, the clerk of courts should pay into the county treasury to the credit of the general revenue fund any forfeited cash bonds transmitted to him by a justice of the peace under the provisions of Section 13433-8, General Code. Opinion No. 980, Opinions of the Attorney General for 1937, p. 1715, approved and followed.

3. Where a cash bond has been forfeited by a justice of the peace in a case in which the accused has been apprehended or arrested by a state highway patrolman, and where the justice of the peace has transmitted such forfeited cash bond to the clerk of courts, as required by Section 13433-8, General Code, the clerk should pay the proceeds of such bond, as required by Section 1183-4, General Code, in equal parts to the state treasurer and to the county treasurer.

Columbus, Ohio, February 16, 1953

Hon. Robert E. Cook, Prosecuting Attorney
Portage County, Ravenna, Ohio

Dear Sir:

I have for consideration request for a clarification of my letter to your office regarding the disposition of cash bonds forfeited by a justice of the peace in traffic cases.

In my earlier communication I expressed concurrence in the conclusions reached in Opinion No. 1546, Opinions of the Attorney General for 1937, p. 2553, the syllabus in which is as follows:

“Where a person charged with a violation of the Motor Vehicle Laws, Sections 12603 to 12630-3, inclusive, General Code, posts a cash bond with the Justice of the Peace for appearance and fails to appear at the time specified in the recognizance, it is the mandatory duty of the Justice of the Peace, pursuant to the authority of Section 13433-8, General Code, to declare such recognizance forfeited and transmit a transcript of his proceedings in the case, together with the recognizance to the clerk of the proper court, and the Justice of the Peace has no authority to render a judgment for costs and deduct the same from the forfeited cash bond.”

You now make inquiry relative to the duty of the clerk of the Common Pleas Court to whom such a transcript and forfeited cash recognizance has been transmitted by a magistrate, specifically setting out the following questions:

- “1. Does the Clerk of Court docket it as a criminal action or what does he do with the transcript?
- “2. Or does the Clerk of Court just hold the transcript and pass the money through his Cash Books and turn it over to the County Treasurer?
- “3. In a State Patrol case, does he split the forfeiture of the bond, one-half to the Treasurer of State of Ohio, and one-half to the County Treasurer as provided in G. C. 1183-4?”

As to your first question it would appear that the provisions of Section 13435-13, General Code, would be applicable, such section providing in part as follows:

"When a transcript or recognizance is received by the clerk of the court of common pleas, he shall enter the same upon the appearance docket of the court, with the date of the filing of such transcript or recognizance, the date and amount of the recognizance, the names of the sureties and the costs. Such recognizance shall be considered thereupon as of record in such court, and proceeded on by process issuing therefrom, in a like manner as if it had been entered into before such court. * * *"

As to your second question, the disposition of the money involved would appear to be subject to the rule stated in Opinion No. 980, Opinions of the Attorney General for 1937, p. 1715, the syllabus in which is as follows:

"Until otherwise provided for by law, moneys coming into the hands of public officers as the result of forfeited recognizances should be paid into the county treasury to the credit of the general revenue fund."

In cases where the accused is apprehended by state highway patrolmen, however, there is a special provision for the distribution of cash bond forfeiture in Section 1183-4, General Code, which reads in part:

"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 is 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. * * *"

In your inquiry you have evidently proceeded on the assumption that if any division of the funds in question is to be made under the provisions of this section that part to be distributed to the local subdivision would go to the county treasury rather than to the city or village treasury; and this indicates that you are familiar with the ruling in Opinion No. 2762, Opinions of the Attorney General for 1934, page 794, the syllabus of which is 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.”

I concur in the conclusions thus stated in the 1934 opinion and for that reason, and in view of the plain provisions of Section 1183-4, General Code, I conclude that in a so-called “state highway patrol case,” where a cash bond has been forfeited by a magistrate and transmitted to the clerk of courts, it is the duty of the clerk to remit the proceeds of the forfeiture in equal parts to the state treasurer and to the county treasurer.

For these reasons, in specific answer to your inquiry, it is my opinion that :

1. Where a justice of the peace, in a case involving an alleged violation of the state traffic laws, Section 6307-1, et seq., General Code, declares a cash bond forfeited due to the failure of the accused to appear, and transmits such cash bond with a transcript of his proceedings in the case, as required by Section 13433-8, General Code, to the clerk of the Common Pleas Court, such clerk should enter the same on the appearance docket of such court as provided in Section 13435-13, General Code.

2. Except as otherwise provided by law, the clerk of courts should pay into the county treasury to the credit of the general revenue fund any forfeited cash bonds transmitted to him by a justice of the peace under the provisions of Section 13433-8, General Code. Opinion No. 980, Opinions of the Attorney General for 1937, p. 1715, approved and followed.

3. Where a cash bond has been forfeited by a justice of the peace in a case in which the accused has been apprehended or arrested by a state highway patrolman, and where the justice of the peace has trans-

mitted such forfeited cash bond to the clerk of courts, as required by Section 13433-8, General Code, the clerk should pay the proceeds of such bond, as required by Section 1183-4, General Code, in equal parts to the state treasurer and to the county treasurer.

Respectfully,

C. WILLIAM O'NEILL
Attorney General