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FINES COLLECTED IN COUNTY COURTS FROM PERSONS ARRESTED BY STATE HIGHWAY PATROLMEN SHOULD BE DISTRIBUTED AS PROVIDED IN SECTION 5503.04, R.C.— §§1907.101, 2931.08, 2949.11, 5503.04, 4513.35, R.C.

SYLLABUS:

The provisions of Sections 1907.101, 2931.08, and 2949.11, Revised Code, as to the distribution of fines, do not render inoperative the provisions of Sections 5503.04 and 4513.35, Revised Code, relating to fines in state highway patrol cases; and fines collected in county courts from persons arrested by state highway patrolmen should be distributed as provided in said Section 5503.04.

Columbus, Ohio, June 28, 1961

Hon. Robert Webb, Prosecuting Attorney
Ashtabula County, Jefferson, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I have been asked to obtain an Informal Opinion from your office, relative to the application of the following Statutes, affecting the disposition of fines collected by County Courts.

“Sec. 2931.08 of the Revised Code directs the Judge of a County Court to pay fines collected to the General Fund of the County, ‘unless otherwise provided by Sections 3375.50 to 3375.52, inclusive, of the Revised Code.’ The effective date of this statute is January 1, 1958.

“Sec. 1907.101, Par. C. of the Revised Code directs the Clerk date 10/5/55, which also relate to the disposition of monies collected for the violation of State laws, ‘subject to sections 3375.50 and 3375.53 of the Revised Code’. Effective date of this statute is November 6, 1959.

“The specific question is: Do the above statutes, which concern themselves specifically with disposition of fines collected by County Courts, and which fail to mention Sections 5503.04 R.C., effective date October 5, 1955, or Section 4513.35 effective date 10/5/55, which also relate to the disposition of mones collected as fines, render inoperative Sections 5503.04 and 4513.35 R.C., insofar as County Courts are concerned.”

As you note, there are several sections of law affecting the disposition of fines collected by county courts. Your letter of request refers to Sections 2931.08, 1907.101, 5503.04, and 4513.35, Revised Code. Also to consider is Section 2949.11, Revised Code.

Section 2931.08, Revised Code, reads as follows :

“Fines collected by a judge of a county court shall be paid into the general fund of the county where the offense was committed within thirty days after the collection unless otherwise provided by sections 3375.50 to 3375.52, inclusive, of the Revised Code.”

Division (C) of Section 1907.101, Revised Code, reads :

“(C) The clerk of a county 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 3375.53 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.”

Section 2949.11, Revised Code, provides :

“Unless otherwise required by sections 3375.50 to 3375.52, inclusive, of the Revised Code, an officer who collects a fine shall pay it into the treasury of the county in which such fine was assessed, within twenty days after the receipt thereof, to the credit of the county general fund. The county treasurer shall issue duplicate receipts therefor, and the officer making the collection shall deposit one of said receipts with the county auditor.”

Section 2949.11, *supra*, is of a general nature as it pertains to any officer collecting a fine. Sections 2931.08 and 1907.101, *supra*, on the other hand, are of a special nature, the former pertaining to the disposition of fines collected by a judge of a county court, the latter dealing with the duty of the clerk of a county court as to the collection and disposition of fines, etc. It is a general rule of law that a special statute dealing with a

particular subject matter constitutes an exception to a general statute which deals with that subject matter, but also deals with other subject matter (*Fisher Bros. Co. v. Bowers*, 166 Ohio St., 191 at 196). In accord with this rule, therefore, I am of the opinion that both Sections 2931.08 and 1907.101, *supra*, take precedence over the provisions of Section 2949.11, *supra*, as regards the collection and disposition of fines.

I might also note that as between Section 2931.08 and 1907.101, *supra*, I held in the second paragraph of the syllabus of Opinion No. 1185, Opinions of the Attorney General for 1960, issued on March 16, 1960:

“Section 1907.101, Revised Code, as a later expression of the legislature, takes precedence over Section 2931.08, Revised Code, and, under said Section 1907.101, a fine received by a county court for a violation of a municipal ordinance should be paid into the treasury of the municipal corporation whose ordinance was violated.”

Accordingly, the provisions of Section 1907.101, *supra*, constitute an exception to the provisions of Sections 2931.08, *supra*.

Section 5503.04, Revised Code, 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 forty-five percent into the state treasury and fifty-five per cent to the treasury of the municipal corporation where such case is prosecuted if in a mayor's court. If such prosecution is a trial court outside a municipal corporation or outside the territorial jurisdiction of a municipal court, such moneys shall be paid fifty-five per cent into the county treasury. Such moneys paid into the state treasury shall be credited to the state highway maintenance and repair fund. The moneys paid into a county treasury and the moneys paid into the treasury of a municipal corporation shall be deposited one half to the same fund and expended in the same manner as is the revenue received from the registration of motor vehicles, and one half to the general fund of such county or municipal corporation.

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Section 4513.35, Revised Code, provides:

“All fines 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."

Section 5503.04, *supra*, deals with the distribution of fines collected in state highway patrol cases; and Section 4513.35, *supra*, states that where the fines provided for in the section are collected in state highway patrol cases, they shall be distributed as provided in Section 5503.04, *supra*. These two sections are, therefore, compatible with one another. They are, however, in conflict with Sections 2931.08, 1907.101, and 2949.11, *supra*, because they provide a different disposition of fines from that contained in those sections. The question is, which provisions take precedence.

I note that the provisions of Section 2949.11, *supra*, have been in existence since 1929; Section 4513.35, *supra*, since 1941; Section 5503.04, *supra*, since 1945; Section 2931.08, *supra*, as applying to a judge of a county court, since 1958; and Section 1907.101, *supra*, since 1959. Thus, Sections 2931.08 and 1907.101, *supra*, may both be considered later expressions of the legislature than Sections 5503.04 and 4513.35, *supra*.

I am aware of the sometimes applied rule that where two statutes contain repugnant provisions the latest expression of the legislature will govern (*State v. Lathrop*, 93 Ohio St., 79 (85)). It must be noted, however, that as between Sections 2931.08 and 1907.101, *supra*, and Sections 5503.04 and 4513.35, *supra*, the former, dealing with the disposition of all fines, are of a general nature and the latter, pertaining to particular fines, are of a special nature. Thus, the rule here applying is that expounded in *Fisher Bros. Co.*, *supra*, that a special statute dealing with a particular subject matter constitutes an exception to a general statute which deals with that subject matter but also deals with other subject matter (Also see 59 Corpus Juris, 1056, Section 623).

A somewhat similar question was considered by one of my predecessors in Opinion No. 1132, Opinions of the Attorney General for 1952, page 107. That question concerned a conflict between Section 1183-4, General Code (now Section 5503.04, *supra*), and Section 1610 (F), General Code (now Section 1901.31 (F), Revised Code), which authorized the clerk of a municipal court to disburse fines collected by the court. At page 109 of that opinion it is stated:

“It must be borne in mind, however, that a *general* statutory provision is found in Section 1610 (F), *supra*, and that Section 1183-4, *supra*, is a *special* provision relative to the same subject.”

And at page 110:

“It appears obvious to me in the instant case that as to the two statutes with which we are here concerned, there is no direct, strong, and absolute repugnance, and that it is easily possible for both statutes to stand together and to be enforced concurrently. For this reason I conclude with respect to your first question that the provisions of Section 1610 (F), General Code, do not have the effect of repealing by implication any of the provisions of Section 1183-4, General Code; and that the latter is controlling on the question of distribution of fines in cases where the arrest is made by a state highway patrolman.

“The same reasoning would be applicable and the same conclusion would result as to any other special statutory provisions relative to the distribution of the funds here in question.”

Returning to the instant question, I am of the opinion that the statutes concerned may stand together and be enforced concurrently, that Sections 5503.04 and 4513.35, *supra*, are not rendered inoperative insofar as county courts are concerned, and that those sections are controlling on the question of distribution of fines in cases where the arrest is made by a state highway patrolman.

Accordingly, it is my opinion and you are advised that the provisions of Sections 1907.101, 2931.08, and 2949.11, Revised Code, as to the distribution of fines, do not render inoperative the provisions of Sections 5503.04 and 4513.35, Revised Code, relating to fines in state highway patrol cases; and fines collected in county courts from persons arrested by state highway patrolmen should be distributed as provided in said Section 5503.04.

Respectfully,
MARK MCELROY
Attorney General