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1. FINES—TRAFFIC CASES—BY REASON, PROVISIONS OF SECTION 1.24 RC, LANGUAGE OF SECTION 4513.35 RC MUST BE DEEMED TO BE A RESTATEMENT OF FORMER SECTION 6307-108 GC.
2. DISCUSSION, SECTIONS 6307-108 GC, 1181-5 GC—AM. SB 204, 96, GA.
3. FINES COLLECTED IN TRAFFIC CASES PROSECUTED IN COMMON PLEAS COURT—SHOULD BE PAID BY CLERK OF COURT INTO COUNTY TREASURY—SECTION 4513.35 RC—EXCEPTION, PORTION DISTRIBUTED TO LOCAL LAW LIBRARY—SECTION 3375.53 RC—THESE FUNDS SHOULD BE PAID INTO COUNTY TREASURY—EXCEPTION, FUNDS OBTAINED BY ARREST MADE BY MEMBER, STATE HIGHWAY PATROL—THESE FUNDS SHOULD BE PAID, ONE HALF TO COUNTY TREASURY, ONE HALF TO STATE TREASURY—SECTION 3375.53 RC —OAG, 1939, OPINION 402, PAGE 512.

SYLLABUS:

1. By reason of the provisions of Section 1.24, Revised Code, the language of Section 4513.35, Revised Code, must be deemed to be a mere restatement, without substantive change, of former Section 6307-108, General Code.

2. The reference in former Section 6307-108, General Code, to former Section 1181-5, General Code, had the effect of incorporating the provisions of the latter section in the former; and the repeal of such latter section in the enactment of Amended Senate Bill No. 204, 96th General Assembly, did not have the effect of deleting from Section 6307-108, General Code, the provisions thus adopted and incorporated therein.

3. Fines collected in traffic cases prosecuted in the common pleas court should be paid by the clerk of such court as directed in Section 4513.35, Revised Code, and with the exception of that portion thereof which is distributed to the local law library as provided in Section 3375.53, Revised Code, such funds should be paid into the county treasury in all such cases except those in which the arrest has been made by a member of the state highway patrol, in which case such funds should be paid, subject to the provisions of Section 3375.53, Revised Code, one-half to the county treasury and one-half to the state treasury. Opinion No. 402, Opinions of the Attorney General for 1939, page 512, approved and followed.

Columbus, Ohio, November 23, 1955

Hon. Howard G. Eley, Prosecuting Attorney
Darke County, Greenville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“There seems to be considerable confusion as to the distribution of fines on traffic arrests when brought in the Court of Common Pleas. The Clerk of Courts of Darke County has asked that I write and ask your office for your opinion as to the distribution of fines levied in the Court of Common Pleas in each of the following instances:

- (1) When the arrest is made by the sheriff of Darke County
- (2) When the arrest is made by the State Highway Patrol
- (3) When the arrest is made by the Police of the City of Greenville.”

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 paid one half into the state treasury and one half into the treasury of the municipal corporation in which such case is prosecuted.”

This section is a mere recodification without substantive change, as

provided in Section 1.24, Revised Code, of Section 6307.108, General Code, which read as follows:

“All fines collected under the provisions of this act shall be paid into the county treasury and, with the exception of that portion distributed under section 3056-3 of the General Code, shall be placed to the credit of the fund for the maintenance and repair of the highways within such county, provided, however, that 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 *subject to the provisions of section 1181-5 of the General Code.*”
(Emphasis added.)

Former Section 1181-5, General Code, thus incorporated by reference in Section 6307-108, *supra*, was repealed with the enactment of analogous Section 1183-4, General Code, in Senate Bill No. 204, 96th General Assembly. The latter section is substantially identical to former Section 1181-5, General Code, and is now codified as Section 5503.04, Revised Code.

It is an established rule of construction that the repeal of an act, or part thereof, which is incorporated by reference in another statute has no effect on such other statute. In Sutherland, *Statutory Construction*, 3rd Edition, Vol. I, Section 2041, pp. 521, 522, it is said:

“Where a reference statute incorporates the terms of one statute into the provisions of another state (sic), ‘the two statutes co-exist as separate distinct legislative enactments, each having its appointed sphere of action.’ As neither statute depends upon the other’s enactment for its existence, the repeal of the provision in one enactment does not affect the identical provision in the other statute. Thus where a statute prescribed the method of selecting special circuit court judges and a subsequent statute adopted by reference this method for the selection of special quarterly court judges, the repeal of the first statute did not operate to terminate the method of selecting judges in the adopting statute. Similarly, where a statute has adopted the provision of another statute by reference, the suspension of the provision in one enactment does not operate to suspend the identical provision in the other statute.”

Applying this rule to Section 4513.35, Revised Code, therefore, it is necessary to consider that section as modified by the provisions of former Section 1181-5, General Code, which provisions, as I have indicated, are substantially identical with those now found in Section 5503.04,

Revised Code. Former Section 1181-5, General Code, 115 O. L., pp. 95, 96, read 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 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 state treasurer out of the state highway maintenance and repair fund.”

In Opinion No. 402, Opinions of the Attorney General for 1939, page 512, the syllabus is as follows:

“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.”

In the inquiry to which this opinion was responsive the question was raised:

“Is one-half of the fine payable to the treasurer of the city in which the Common Pleas Court is located?”

In response to this question the writer referred briefly to Opinion No. 713, Opinions of the Attorney General for 1937, page 1273, and then said page 514:

“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.”

I concur in this ruling and so conclude that fines imposed in traffic cases in the court of common pleas, where the arrest is made by a member of the highway patrol, should be paid, except as to that portion distributed to the law library association as provided in Section 3375.53, Revised Code, one-half to the state treasury and one-half into the county treasury. Where the arrest in such a case is made by any other police officer, the entire amount of such fines, except that portion paid to the law library association, should be paid into the county treasury as provided in Section 4513.35, Revised Code.

Accordingly, in specific response to your inquiry, it is my opinion that :

1. By reason of the provisions of Section 1.24, Revised Code, the language of Section 4513.35, Revised Code, must be deemed to be a mere restatement, without substantive change, of former Section 6307-108, General Code.

2. The reference in former Section 6307-108, General Code, to former Section 1181-5, General Code, had the effect of incorporating the provisions of the latter section in the former; and the repeal of such latter section in the enactment of Amended Senate Bill No. 204, 96th General Assembly, did not have the effect of deleting from Section 6307-108, General Code, the provisions thus adopted and incorporated therein.

3. Fines collected in traffic cases prosecuted in the common pleas court should be paid by the clerk of such court as directed in Section 4513.35, Revised Code, and with the exception of that portion thereof which is distributed to the local law library as provided in Section 3375.53, Revised Code, such funds should be paid into the county treasury in all such cases except those in which the arrest has been made by a member of the state highway patrol, in which case such funds should be paid, subject to the provisions of Section 3375.53, Revised Code, one-half to the county treasury and one-half to the state treasury. Opinion No. 402, Opinions of the Attorney General for 1939, page 512, approved and followed.

Respectfully,

C. WILLIAM O'NEILL

Attorney General