

1466

WHERE THERE IS A BAIL FORFEITURE THE MAGISTRATE OR CLERK OF THE COURT ADJUDGING FORFEITURE MAY SATISFY THE AMOUNT OF THE ACCRUED COSTS IN THE CASE OUT OF THE AMOUNT OF BAIL—§§2937.36, 5503.04, R.C.

SYLLABUS:

Where there is a bail forfeiture in a case involving an arrest by a state highway patrolman, the magistrate or clerk of the court adjudging forfeiture may, pursuant to Section 2937.36, Revised Code, satisfy the amount of the accrued costs in the case out of the amount of bail before paying the moneys arising from the forfeiture as directed in Section 5503.04, Revised Code.

Columbus, Ohio, June 16, 1960

Hon. George E. Schroeder, Prosecuting Attorney
Putnam County, Ottawa, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Clerk of the Putnam County Clerk of Courts has submitted a request to me for my opinion on the question which has arisen involving the distribution of moneys arriving from bonds forfeited by persons apprehended or arrested by the State Highway Patrol.

“Section 5503.04 of the Revised Code, effective 10-5-55, provides that forty-five per cent of the moneys arising from such forfeited bonds shall be paid into the state treasury and fifty-five per cent to the treasury of the municipal corporation where such case is prosecuted, or into the county treasury if the prosecution is in a trial court outside a municipal corporation.

“However, Section 2937.36 of the Revised Code, effective 1-1-60, provides as follows:

“‘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.’

“The specific question is: May the Clerk of the County Court satisfy the accrued court costs out of moneys arising from forfeited bonds where the arresting officer is a State Highway patrolman or must the moneys be distributed forty-five per cent to the state treasury and fifty-five per cent to the county treasury without satisfying accrued costs.”

Section 5503.04, Revised Code, to which you refer, reads in part as follows:

“All fines collected from or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen shall be paid forty-five per cent 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 in 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 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.

“If such prosecution is in a municipal court, forty-five per cent of such moneys shall be paid into the state treasury to be credited to the state highway maintenance and repair fund, ten per cent to the county treasury, and forty-five per cent to the municipal treasury to be credited to the general fund of such county or municipal corporation.

“The trial court shall make remittance of such moneys as prescribed in this section, * * *.”

Your question concerns the effect of Section 2937.36, Revised Code, on the provisions of Section 5503.04, *supra*, as regards forfeiture of bail. On this point, said Section 2937.36 provides:

“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.

“* * *

You ask whether the entire amounts of forfeited bonds in arrests by state highway patrolmen should be paid as provided in Section 5503.04, *supra*, regardless of the provisions of Section 2937.36, *supra*.

In Opinion No. 1372, Opinions of the Attorney General for 1960, issued on May 23, 1960, I had occasion to consider a question similar to that here concerned. The question there involved was whether the entire amount of a bail forfeiture in a case arising under Sections 1531.01 to 1531.26, inclusive, and Sections 1533.01 to 1533.69, inclusive, Revised Code, should be paid to the director of natural resources, or whether the magistrate or clerk of the court could satisfy the costs out of the bail before paying the forfeiture to the director. In Opinion No. 1372, *supra*, I stated:

“While it might be argued that under Section 1531.17, *supra*, the director of natural resources should be paid the entire amount of a forfeiture, this argument does not appear persuasive in view of the above-noted language of division (A) of Section 2937.36, Revised Code. Clearly, the two sections, so far as they apply to bail forfeitures, may be read together to ascertain the intent of the legislature. (37 Ohio Jurisprudence, Section 332, page 599.)”

The syllabus of said Opinion No. 1372 reads as follows:

“Pursuant to the provisions of Sections 1531.17 and 2937.36, Revised Code, a bail forfeiture in a case arising under Sections 1531.01 to 1531.26, inclusive, and 1533.01 to 1533.69, inclusive, Revised Code, unless otherwise directed by the director of natural resources, should be paid to the director, except that the magistrate or clerk of the court adjudging forfeiture may satisfy the amount of the accrued costs in the case out of the amount of bail before paying the forfeiture to the director.”

In considering the sections of law involved in the instant question, I am of the opinion that they should be read together to ascertain the

intent of the legislature. Section 5503.04, *supra*, provides that “moneys arising from bonds forfeited * * * shall be paid * * *.” Section 2937.36, *supra*, provides that the magistrate or clerk may satisfy accrued costs in the case out of the bail forfeiture before paying out said forfeiture. Actually, where the costs have been deducted the “moneys arising” are the funds left after the deduction. Accordingly, I conclude that the magistrate or clerk may deduct the amount of costs in the case from the bail forfeiture before paying the moneys arising from a bond forfeiture as directed in Section 5503.04, *supra*.

Answering your specific question, therefore, it is my opinion and you are advised that where there is a bail forfeiture in a case involving an arrest by a state highway patrolman, the magistrate or clerk of the court adjudging forfeiture may, pursuant to Section 2937.36, Revised Code, satisfy the amount of the accrued costs in the case out of the amount of bail before paying the moneys arising from the forfeiture as directed in Section 5503.04, Revised Code.

Respectfully,
MARK McELROY
Attorney General