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A BAIL FORFEITURE, UNLESS OTHERWISE DIRECTED BY THE DIRECTOR OF NATURAL RESOURCES, SHOULD BE PAID TO THE DIRECTOR. §§1531.01 to 1531.26, R.C., §§ 1533.01 to 1533.69, R.C.

SYLLABUS:

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.

Columbus, Ohio, May 23, 1960

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

Dear Sir:

Your request for my opinion reads as follows:

“Section 2937.36 of the Revised Code, which became effective January 1, 1960, provides that the magistrate or clerk of the court adjudging a bail forfeiture may satisfy accrued costs in the case out of the same.

“Section 1531.17 of the Revised Code provides that all fines, penalties and forfeitures arising from prosecutions, convictions, confiscations or otherwise in the Division of Wildlife of the Department of Natural Resources shall be paid by the officer by whom the *fine* is collected to the Director (of the Department of Natural Resources) and by him paid into the State Treasury to the credit of a fund which shall be appropriated biennially for the use of the Division of Wildlife.

“In the Opinion of the Attorney General No. 2074, rendered November 18, 1952, it was held that the proceeds of a bond, declared forfeited by a magistrate when a person who is charged with violating a Wildlife Council Order or a provision of law relating to the taking, protection, preservation, possession or propagation of wild animals fails to appear, should be paid to the Director of Natural Resources by the magistrate.

“An opinion is respectfully requested, in view of the enact-

ment of Section 2937.36 of the Revised Code, as to whether or not the magistrate by whom a bail is declared forfeited shall turn the whole forfeiture over to the Department of Natural Resources or whether that magistrate, or clerk of his court, shall retain the costs of the proceeding out of the bail forfeited, remitting the remainder.”

Section 1531.17, Revised Code, provides as follows :

“All fines, penalties, and forfeitures arising from prosecutions, convictions, confiscations, or otherwise under sections 1531.01 to 1531.26, inclusive, and 1533.01 to 1533.69, inclusive, of the Revised Code, unless otherwise directed by the director of natural resources, shall be paid by the officer by whom the fine is collected to the director and by him paid into the state treasury to the credit of a fund which shall be appropriated biennially for the use of the division of wildlife. All moneys collected as license on nets in the Lake Erie fishing district shall be paid by the director into the state treasury as a special fund to be used in the betterment and the propagation of fish therein, or in otherwise propagating fish in such district; and for that purpose such fund shall be appropriated biennially, and be paid out upon the order of the wildlife council, but shall not be used or paid out for any purpose other than the purposes for which said fund is appropriated.”

In construing the language of Section 1531.17, *supra*, then Section 1445, General Code, one of my predecessors in Opinion No. 2074, Opinions of the Attorney General for 1952, page 760, held in the syllabus :

“The proceeds of a bond declared forfeited by a magistrate when a person who is charged with violating a Wildlife Council Order or a provision of law relating to the taking, protection, preservation, possession or propagation of wild animals, fails to appear should be paid to the Director of Natural Resources by the magistrate in accordance with the provisions of Section 1445, General Code.”

Your question concerns the effect of Section 2937.36, Revised Code, on the procedure of Section 1531.17, *supra*, as regards forfeiture of bail. On that 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 ac-

cordingly provided that prior to so doing, he may satisfy accrued costs in the case out of the fund.

“* * *”

Thus, Section 1531.17, *supra*, provides that all fines, penalties, and forfeitures shall be paid to the director, while Section 2937.36, *supra*, provides that the accrued costs of the case may be taken out of the bail forfeiture before said forfeiture is distributed.

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.)

Answering your specific question, therefore, it is my opinion and you are advised that 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.

Respectfully,

MARK MCELROY
Attorney General