

paid shall be added by the county auditor, and the taxes and penalty forthwith collected by the county treasurer.”

From the foregoing, it will be noted that the 10 per cent penalty “shall be added by the county auditor, and the taxes and penalty forthwith collected by the county treasurer.”

There is no authority for the waiving of any penalty or interest by the county auditor or the county treasurer, in making collection of delinquent taxes, except under the various Whittemore Acts. From December 30, 1936, to February 24, 1937, no Whittemore Act was in effect, so there is no authority for the abatement or remittance of penalties or interest on delinquent taxes paid during the above period.

Therefore, in specific answer to your inquiry it is my opinion that, penalties and interest are not authorized to be abated or remitted to taxpayers by the county auditor or the county treasurer, on delinquent taxes paid between December 30, 1936, and February 24, 1937, for the reason that no law existed then or exists now authorizing such abatement or remittitur.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

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713.

BETWEEN SECTIONS 3056 AND 1181-5, GENERAL CODE, SECTION 1181-5, GENERAL CODE CONTROLS—HIGHWAY PATROL ARRESTS—FINES AND BOND FORFEITURE, DISPOSITION.

*SYLLABUS:*

1. *As to any inconsistency or incompatibility existing between the provisions of Sections 3056 and 1181-5 of the General Code, Section 1181-5 controls, inasmuch as it is later in time and deals with a special matter.*

2. *All fines collected from or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen shall be*

*paid one-half to the state treasury and one-half to the treasury of the incorporated city or village or county where such case may be prosecuted.*

COLUMBUS, OHIO, June 10, 1937.

HON. LYNN BLACK, *Superintendent, State Highway Patrol, Columbus, Ohio.*

DEAR SIR: This is to acknowledge receipt of your recent communication, which reads as follows:

“The question regarding the distribution of fines collected by various courts involving arrests by the State Highway Patrol, has been raised under Sections 3056 and 1181-5 of the General Code. Section 3056 of the General Code provides for an allowance to law libraries from fines collected in criminal cases prosecuted in the name of the State. Section 1181-5 of the General Code covers the distribution of fines collected by courts from prosecution of cases instigated by the Patrol. Several of the municipalities are attempting to withhold part of the fines, under authority of the former statutes and we would like to have a formal opinion from your office regarding this particular question.”

Section 3056 of the General Code, provides as follows:

“All fines and penalties assessed and collected by a municipal or police court for offenses and misdemeanors prosecuted in the name of the state, except a portion thereof equal to the compensation allowed by the county commissioners to the judge of the municipal court presiding in police court, clerk and prosecuting attorney of such court in state cases shall be retained by the clerk and be paid by him monthly to the trustees of such law library associations, but the sum so retained and paid by the clerk of said municipal or police court to the trustees of such law library association shall in no month be less than 15 per cent of the fines and penalties collected in that month without deducting the amount of the allowances of the county commissioners to said judges, clerk and prosecutor.

In all counties the fines and penalties assessed and collected by the common pleas court and probate court for offenses and misdemeanors prosecuted in the name of the state, shall be retained and paid monthly by the clerk of such courts to the trustees of such library association, but the sum so paid from the

finer and penalties assessed and collected by the common pleas and probate courts shall not exceed five hundred dollars per annum. The money so paid shall be expended in the purchase of law books and the maintenance of such association.

It is provided, however, that not to exceed five hundred dollars per annum of the county's share and not to exceed one thousand dollars per annum of the municipality's share of the fines and penalties collected by the common pleas, probate, or a municipal or police court for the violation of the prohibition laws shall be subject to the provisions of this section, and provided further that the total amount paid hereunder in any one calendar year by the clerk of any municipal or police court to the trustees of such library association shall in no event exceed six thousand dollars per annum; and when that amount shall have been so paid to the trustees of such law library association, in accordance with the foregoing provisions of this section, then no further payment shall be required hereunder, in that calendar year, from the clerk of such court."

The above cited section, which provides for the disposition of fines and penalties assessed and collected by a municipal or police court or by a common pleas or probate court was last amended by the General Assembly in 1931 (114 O. L. 89).

Section 1181-5 of the General Code, provides:

"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 treasurer of state out of the state highway maintenance and repair fund."

Section 1181-5, *supra*, was enacted in its present form in 1935 (116 O. L. 339), and it is apparent that in so far as its provisions direct 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 or county as the case may be, the same are in conflict with the provisions of Section 3056, *supra*.

It is a fundamental principle of law that as to any inconsistency or incompatibility existing between the provisions of two statutes, the one later in time and which deals with a special subject matter will control. In support of this principle, your attention is directed to the case of *Thomas, Sheriff, vs. Evans*, 73 O. S. 140. In this case, the court held as disclosed by the first branch of the syllabus that:

"Where the general provisions of a statute are found to be in conflict with the express provisions of a later act relating to a particular subject, the latter will govern although the words of the earlier general act, standing alone, would be broad enough to include the subject to which the more particular provisions relate."

In the recent case of *State, ex rel. Wetterstroem vs. Department of Liquor Control*, 129 O. S. 185, the Supreme Court had before it the question as to whether the pure food and drug laws of Ohio apply to the sale of spirituous liquor by the Ohio Department of Liquor Control. The court in determining this question reaffirmed the principles of law enunciated in the case of *Thomas, Sheriff vs. Evans, supra*, and held that:

"The Liquor Control Act, Section 6064-1 et seq., General Code, is a special, all-inclusive act controlling traffic in intoxicating liquors and was adopted at a period later than the enactment of the Pure Food and Drug Law; in so far as they are incompatible the provisions of the Liquor Control Act must govern."

A question analogous to the one which you have presented by your inquiry was considered by my immediate predecessor in office in an opinion rendered in 1935. In this opinion, found in the Opinions of the Attorney General for 1935, Volume II, at page 968, the then Attorney General was confronted with the question as to the proper procedure which should be followed in making payments to the Law Library Association in respect to fees collected under the Liquor Control Act. In determining this question, the Attorney General held:

“No part of the fines collected by a municipal court for violations of the Liquor Control Act should be considered in computing the amount that a municipal court should pay to a county law library association under the provisions of Section 3056, General Code.”

Construing Section 1181-5, supra, in accordance with the foregoing authorities, the conclusion is inevitable that it was the intent and purpose of the legislature in the enactment of Section 1181-5, supra, in so far as the provisions thereof pertain to the disposition of fines collected from or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen, that all such moneys so collected should be distributed one-half to the state treasury and one-half to the treasury of the incorporated city or village or county where such cases may be prosecuted.

It is therefore my opinion, in specific answer to your inquiry, that:

1. As to any inconsistency or incompatibility existing between the provisions of Sections 3056 and 1181-5 of the General Code, Section 1181-5 controls, inasmuch as it is later in time and deals with a special matter.

2. All fines collected from or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen shall be paid one-half to the state treasury and one-half to the treasury of the incorporated city or village or county where such case may be prosecuted.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*