

OPINION NO. 1410**Syllabus:**

1. When a bail bond posted in a municipal court in connection with a charge of assault and battery under Section 2901.25, Revised Code, is ordered forfeited by the court, such bail bond is subject to Sections 1901.31(F) and 2937.36, Revised Code, and required to be distributed to the county treasury after deduction of the municipal court costs.

2. When a recognizance bond posted in a municipal court under Section 2947.16, Revised Code, is ordered forfeited by the court, such recognizance bond is subject to Sections 1901.31(F) and 2937.36, Revised

Code, and required to be distributed to the county treasury after deduction of municipal court costs.

3. When a bail bond is posted in connection with a charge of burglary under Section 2907.15, Revised Code, which does not prescribe a fine as a part of the sentence, and it is ordered forfeited by the municipal court, such bail bond is subject to Sections 1901.31(F) and 2937.36, Revised Code.

4. In cases involving a violation of a state statute, other than traffic laws, and in the absence of any statutory provision which provides for a specific distribution for the fine, bail, or other money held by the clerk of municipal courts, such fine or bail should be distributed in accordance with Sections 2937.36 and 1901.31(F), Revised Code.

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To: Roger W. Tracy, Auditor of State, Columbus, Ohio
By: William B. Saxbe, Attorney General, September 28, 1964

I have before me your request for my opinion which reads, in part, as follows:

"In prior years it has been the position of this office based upon Opinion No. 1132, Opinions of the Attorney General for 1952, and Opinion No. 5975, Opinions of the Attorney General for 1955, that in cases involving a violation of a state law where statutes do not otherwise provide for the disposition of money held in custody by the clerk of the municipal court, specifically bails, that such forfeited bails should be paid into the treasury of the municipality in which such court is established. Subsequently, in Opinion No. 3241, Opinions of the Attorney General for 1962, the conclusions reached in these prior Opinions were modified for the reason that Section 2937.36, R.C., was amended and became effective January 1, 1960.

"This statute now provides that forfeited bails shall be distributed in the same manner as the fine for the offense charged. Although this Opinion specifically considered offenses involving Sections 4511.01 to 4511.78, 4511.99 and 4513.01 to 4513.37 of the Revised Code, it is believed that the reasoning of this Opinion supports the position that numerous other sections of the Revised Code involving violations of state laws are subject to proceedings in municipal courts and are similarly affected * * *.

"It is understood that several municipal courts in the State of Ohio are presently distributing forfeited bail bonds in accordance with the 1952 and 1955 Opinions referred to above.

"It is believed that your Opinion in this matter will be of considerable importance and will be of interest to municipal and county officials throughout the State. Therefore, your conclusions in response

to the following questions are requested:

"1. When a bail bond posted in municipal court in connection with a charge of assault and battery, under Section 2901.25, Revised Code, is ordered forfeited by the court, is such bail bond subject to Sections 1901.31(F) and 2937.36, Revised Code, and therefore required to be distributed to the county treasury after deduction of the municipal court costs?

"2. Would the answer to number one also apply to a forfeited peace bond? (Section 2947.16, Revised Code)

"3. When a bail bond is posted, pending a preliminary hearing in connection with a charge of burglary under Section 2907.15, Revised Code, and it is ordered forfeited by the municipal court, would the answer to question one apply? It is noted that this is a felony statute which does not prescribe a fine as a part of the sentence, but provides for imprisonment only.

"4. In cases involving a violation of a state statute, other than traffic laws, and in the absence of any statutory provisions which provide for a specific distribution for the fine, bail, or other money held by the clerk of municipal courts, should such fine or bail be distributed in accordance with Section 2937.36 and 1901.31(F), Revised Code?"

Each of the situations presented in your request is governed by the provisions of Section 1901.31(F), Revised Code; this section provides as follows:

"The clerk of a municipal court shall receive and collect all costs, fees, fines, penalties, bail, and other moneys payable to the office or to any office of the court and issue 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. * * *"

It is to be noted that the above-quoted statute provides for the collection of "all costs, fees, fines, penalties, bail and other moneys payable," but it does not provide for the distribution of such moneys collected other than fines. For this reason the 1952 and 1955 Opinions, to which you made reference in your request, were issued. They concluded that moneys held in custody by the clerk of the municipal court, for which there was no other prescribed means of disposition, should be paid into the treasury of the municipality in which such court is established, under the authority of Section 733.46, Revised Code.

However, on January 1, 1960, the procedure prescribed by the aforementioned Opinions was changed by the provisions of Section 2937.36, Revised Code, as amended, and made effective on that date. That section reads in parts here pertinent 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.

"(C) As to recognizances * * *. The proceeds of sale shall be received by the clerk or magistrate and distributed as on forfeiture of cash bail."

Questions numbered (1), (2), and (4) in your request may be answered together. Each question involves a recognizance or bail bond deposited and forfeited in conjunction with a municipal court prosecution for violation of a state statute. In each instance, a fine is prescribed as a part of the sentence to be imposed upon conviction. In none of these instances is there a specific statute setting out a procedure to be followed in disposing of such moneys.

In reference to bail bonds, Section 2937.36(A), supra, explicitly provides that their disposition should be effected in the same manner as fines imposed upon conviction for violation of the statute involved. Section 2937.36(C), Revised Code, explicitly provides that recognizances should be distributed in the same manner. Section 1901.31(F), Revised Code, provides that fines levied in a municipal court for violation of a state statute should be paid into the county treasury subject to Sections 3375.50 and 3375.53, Revised Code.

In question number three of your request, the statute under which prosecution is brought does not prescribe a fine as part of the sentence to be imposed upon conviction. However, a bail bond posted and forfeited as an incident to prosecution under such a statute is to be distributed in the same manner as is one under a statute prescribing a fine.

It is provided in Section 2937.36, Revised Code, that a forfeited bail bond shall be distributed "as if the amount of bail had been imposed as a fine for the offense charged." Therefore, even though there is in fact no fine prescribed as a part of the sentence by statute, a forfeited bail bond is to be treated in the same manner as would be a fine, if there were a fine prescribed by the statute.

Therefore, it is my opinion and you are hereby advised that:

1. When a bail bond posted in a municipal court in connection with a charge of assault and battery under Section 2901.25, Revised Code, is ordered forfeited by the court, such bail bond is subject to Sections 1901.31(F) and 2937.36, Revised Code, and required to be distributed to the county treasury after deduction of the municipal court costs.

2. When a recognizance bond posted in a municipal court under Section 2947.16, Revised Code, is ordered forfeited by the court, such recognizance bond is subject to Sections 1901.31(F) and 2937.36, Revised Code, and required to be distributed to the county treasury after deduction of municipal court costs.

3. When a bail bond is posted in connection with a charge of burglary under Section 2907.15, Revised Code, which does not prescribe a fine as a part of the sentence, and it is ordered forfeited by the municipal court, such bail bond is subject to Sections 1901.31(F) and 2937.36, Revised Code.

4. In cases involving a violation of a state statute, other than traffic laws, and in the absence of any statutory provision which provides for a specific distribution for the fine, bail, or other money held by the clerk of municipal courts, such fine or bail should be distributed in accordance with Sections 2937.36 and 1901.31(F), Revised Code.