

OPINION NO. 89-098**Syllabus:**

Fifty percent of all fines and moneys arising from forfeited bonds collected under R.C. 4511.01 to R.C. 4511.78, R.C. 4511.99, and R.C. 4513.01 to R.C. 4513.37, inclusive, except those fines collected under R.C. 4513.263(B), from persons apprehended or arrested by township constables and other township police officers is to be paid, pursuant to R.C. 4513.35, into the township treasury to the credit of the general fund. The remaining fifty percent of such fines and moneys arising from forfeited bonds is distributed, pursuant to R.C. 3375.53, to the law library association. (1968 Op. Att'y Gen. No. 68-021, syllabus, paragraph two, overruled.)

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, December 29, 1989

I have before me your request for my opinion concerning the application of R.C. 4513.35 to fines and moneys arising from forfeited bonds collected from persons apprehended or arrested by township constables and other township police officers and the portion of such fines and forfeited bonds to be distributed by the county treasurer to the county law library association. Specifically, you ask:

[Do] the provisions of Section 4513.35, Revised Code, require the County Treasurer to pay fifty percent (50%) of fines and forfeitures to the County Law Library Association and fifty percent (50%) of those fines and forfeitures to the township whose police officers made the apprehension or arrest, or is the County Treasurer required to place one-half (1/2) of fifty percent (50%) in the County Highway Maintenance and Repair Fund, forward one-half (1/2) of fifty percent (50%) to the County Law Library Association, and forward the remaining fifty percent (50%) to the township whose police officers made the apprehension or arrest?

R.C. 4513.35, which requires the disbursement of certain fines collected into the county treasury to the credit of the highway maintenance and repair fund, provides:

All fines collected under sections 4511.01 to 4511.78, 4511.99, and 4513.01 to 4513.37 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, except that all fines for violations of division (B) of section 4513.263 [4513.26.3] shall be delivered to the treasurer of state as provided in division (E) of section 4513.263 [4513.26.3] of the Revised Code, that all fines collected from, or moneys arising from bonds forfeited by, persons apprehended or arrested by state highway patrolmen shall be distributed as provided in section 5503.04 of the Revised Code, and that, subject to division (E) of section 4513.263 [4513.26.3] of the Revised Code, one-half of all fines collected from, and one-half of all moneys arising from bonds forfeited by, persons apprehended or arrested by a township constable or other township police officer shall be paid to the township treasury to be placed to the credit of the general fund.

Thus, fines collected for violations of R.C. 4511.01 to R.C. 4511.78, R.C. 4511.99, and R.C. 4513.01 to R.C. 4513.37, inclusive, are generally paid, pursuant to R.C. 4513.35, into the county treasury and, with the exception of the portion disbursed pursuant to R.C. 3375.53,¹ "placed to the credit of the fund for the maintenance and repair of the highways within such county." The section, however, specifically excepts from its provisions all fines collected under R.C. 4513.263(B), all fines and moneys arising from forfeited bonds collected from persons apprehended or arrested by state highway patrolmen, and one half of all fines and moneys arising from forfeited bonds received from individuals apprehended or arrested by township constables and other township police officers.

With respect to your specific inquiry, I note that you have informed me that your research has disclosed contrary opinions with regard to the application of R.C. 4513.35 to fines and moneys arising from forfeited bonds collected from persons apprehended or arrested by township constables and other township police officers under R.C. 4511.01 to R.C. 4511.78, R.C. 4511.99, and R.C. 4513.01 to R.C. 4513.37. You specifically noted that one of my predecessors in response to a question concerning the application of R.C. 4513.35, as amended by 1967-1968 Ohio Laws, Part I, 1660 (Am. H.B. 24, eff. Aug. 15, 1967),² determined that:

Section 4513.35, Revised Code, requires the county treasurer to pay fifty percent of the fines and forfeitures discussed therein to the township whose "police officers" made the arrests or apprehensions and the remaining fifty percent is distributed one-half of fifty percent to the highway maintenance and repair fund and one-half of fifty percent to the county law library association with the twelve hundred dollar maximum limitation.

1968 Op. Att'y Gen. No. 68-021 (syllabus, paragraph two).

You further noted that the Ninth District Court of Appeals in Ohio has taken a contrary position and held:

By the amendment of Section 4513.35, Revised Code (132 Ohio Laws H 24), a part of the money formerly paid to the county for the maintenance and repair of county highways, where arrests were made by township officers, is now paid directly to the township general

¹ R.C. 3375.53, which requires a county treasurer to make monthly disbursements to a law library association, provides:

In each county, fifty per cent of all fines and penalties collected by, and of moneys arising from forfeited bail in, any court in that county for offenses brought for prosecution under Chapters 4301. and 4303. of the Revised Code and the state traffic laws shall be paid monthly by the treasurer of the county or municipal corporation to the board of trustees of the law library association in such county, but the sum so paid to such board by each treasurer shall not exceed twelve hundred dollars per annum under Chapters 4301. and 4303. of the Revised Code, and when that amount has been so paid to such board in accordance with this section, then no further payments shall be required thereunder in that calendar year from such treasurers.

As used in this section, "state traffic laws" does not include division (B) of section 4513.263 [4513.26.3] of the Revised Code.

² 1967-1968 Ohio Laws, Part I, 1660 (Am. H.B. 24, eff. Aug. 15, 1967) added the following language to R.C. 4513.35:

and provided that one-half of all fines collected from, and one-half of all moneys arising from bonds forfeited by, persons apprehended or arrested by a township constable or other township police officer shall be paid to the township treasury to be placed to the credit of the general fund.

fund. The balance of such money arising from arrests by township officers is to be paid as provided by Section 3375.53, Revised Code, to the law library fund.

State ex rel. Akron Law Library Ass'n v. Weil, 16 Ohio App. 2d 151, 242 N.E.2d 664 (Summit County 1968) (syllabus, paragraph three). The Ninth District Court of Appeals in Ohio, thus, requires that all fines and moneys arising from forfeited bonds collected from individuals apprehended or arrested by township constables and other township police officers under R.C. 4511.01 to R.C. 4511.78, R.C. 4511.99, and R.C. 4513.01 to R.C. 4513.37 be disbursed fifty percent to the township treasury and fifty percent to the law library association. *Id.* at 157, 242 N.E.2d at 668. Consequently, Op. No. 68-021 and the decision of the Ninth District Court of Appeals in Ohio in *State ex rel. Akron Law Library Ass'n v. Weil* are in conflict with respect to the distribution of fines and forfeited bonds under R.C. 4513.35.³

I note that while opinions of the Attorney General may be persuasive, they do not have the binding precedential effect of a court decision. See *Spitaleri v. Metro RTA*, 67 Ohio App. 2d 57, 426 N.E.2d 183 (Summit County 1980); *State ex rel. Freshcorn v. Board of Educ. Blanchester Local School Dist.*, 89 Ohio App. 196, 101 N.E.2d 137 (Clinton County 1951); *Delmond v. Board Investors Co.*, 35 Ohio Op. 419, 74 N.E.2d 376 (Cuyahoga County 1947), *aff'd per curiam*, 148 Ohio St. 301, 74 N.E.2d 373 (1947); *Anderson v. Wolf*, 17 Ohio L. Abs. 161 (Greene County 1934); *Johnson v. State*, 6 Ohio Op. 3d 217, 375 N.E.2d 1268 (C.P. Montgomery County 1977); *State ex rel. Robinson v. Board of Trustees, Hamilton Township*, 52 Ohio Op. 106, 116 N.E.2d 607 (C.P. Lawrence County 1953); *Whitely v. Arbogast*, 17 Ohio Dec. 569, 6 Ohio N.P. (n.s.) 313 (C.P. Clark County 1907), *aff'd*, 9 Ohio C.C. (n.s.) 584, 19 Ohio C.C. Dec. 595 (Ct. App. Clark County 1907), *aff'd mem.*, 79 Ohio St. 429, 87 N.E. 1130 (1908). In practice though, such opinions are generally followed since they represent the opinion and advice of the chief legal officer of the state. 1939 Op. Att'y Gen. No. 534, vol. I, p. 670 at 672; 1927 Op. Att'y Gen. No. 397, vol. I, p. 689 at 689; see *State v. Bundy*, 79 Ohio L. Abs. 253, 256, 154 N.E.2d 924, 927 (Findlay Mun. Ct. 1956) ("[w]hile the Attorney General's Opinion is not controlling on this Court under the rule of [*stare decisis*], it is, nevertheless, as the considered opinion of the State's chief legal officer, of persuasive weight, and in the absence of other authority this Court is constrained to follow it"). This occurs notwithstanding the fact that such opinions have in no sense the effect of judicial utterances. 1939 Op. No. 534 at 672. Courts, however,

are by the law made such final arbiters, and when the law is interpreted by a court the interpretation given to it by the court becomes the law within the jurisdiction of the court, and such interpretation as the court gives to the law should be followed and acted upon, at least within the territory over which such court has jurisdiction.

1927 Op. No. 397 at 689; accord 1939 Op. No. 534; see also *Greenwood v. City of Portsmouth*, 58 Ohio Op. 2d 474, 476, 281 N.E.2d 45, 47 (C.P. Scioto County 1971) ("[t]he principle that a decision of the Court of Appeals, unless it is in conflict with the decision of the Supreme Court, binds the Courts of Common Pleas and constitutes conclusive evidence of the law within that appellate district, is too well established to require a statement of supporting authorities"). Further, an Ohio

³ I note that R.C. 4513.35 has been amended since the writing of 1968 Op. Att'y Gen. No. 68-021 and the decision of the Ninth District Court of Appeals in Ohio in *State ex rel. Akron Law Library Ass'n v. Weil*, 16 Ohio App. 2d 151, 242 N.E.2d 664 (Summit County 1968). See 1985-1986 Ohio Laws, Part I, 49, 77-78 (Am. Sub. S.B. 54, eff. May 6, 1986). The amendment specifically exempts fines collected under R.C. 4513.263(B) from the disbursement provisions of R.C. 4513.35. These fines are disbursed to the state treasurer in their entirety. R.C. 4513.263(E). Thus, neither the township treasury nor the law library association receives a portion of the fines collected from individuals apprehended or arrested by township constables and other township police officers under R.C. 4513.263(B).

Court of Appeals decision is given a great deal of respect and generally, unless inherently wrong, followed by the other Courts of Appeals in Ohio. See *Pilkington v. Saas*, 25 Ohio L. Abs. 663, 667 (Franklin County 1937) ("[d]ecisions of Courts of Appeal [sic] of other districts are not binding upon us, but in the interest of stability of law are to be followed, unless in our judgment the principles announced are inherently wrong"); *Dawson v. Kemper*, 1 Ohio Dec. 556, 561 (C.P. Hamilton County 1894) ("[w]hen a question of law has been directly decided by one of the circuit courts of Ohio, it should be followed by the other circuits, unless it clearly appears to the court that the decision is wrong" (quoting *State ex rel. Wentzell v. Fosdick*, 1 Ohio C.C. 265, 1 Ohio Cir. Dec. 145 (Hamilton County 1885) (syllabus))), *aff'd*, 11 Ohio C.C. 180, 5 Ohio Cir. Dec. 130 (Ct. App. Hamilton County 1896). See generally *Clark v. Snapper Power Equip., Inc.*, 21 Ohio St. 3d 58, 60, 488 N.E.2d 138, 140 (1986) ("[i]t is the policy of courts to stand by precedent and not to disturb a point once settled. The doctrine of *stare decisis* is one of policy which recognizes that security and certainty require that an established legal decision be recognized and followed in subsequent cases where the question of law is again in controversy"); *In re Copley*, 29 Ohio St. 2d 35, 36, 278 N.E.2d 358, 359 (1972) ("the adhesive which case law imparts to our collective endeavors must be of dependable consistency, and must be available for reliance unless and until a change is clearly mandated"); *State ex rel. Beil v. Mahoning Valley Distrib. Agency, Inc.*, 84 Ohio L. Abs. 427, 442, 169 N.E.2d 48, 61 (C.P. Mahoning County 1960) ("[i]t is fundamental that the policy of a State in any field of law may be determined by court decisions in the absence of a statutory limitation"), *aff'd*, 116 Ohio App. 57, 186 N.E.2d 631 (Ct. App. Mahoning County 1962). Thus, when a court of competent jurisdiction has rendered a decision which is in conflict with an opinion of the Attorney General, the interpretation of the statute by the court of competent jurisdiction should be followed. See 1939 Op. No. 534 at 673; 1927 Op. No. 397 at 689. Accordingly, I am constrained to find that the interpretation of R.C. 4513.35 by the Ninth District Court of Appeals in Ohio in *State ex rel. Akron Law Library Ass'n v. Weil* should be followed.

Therefore, it is my opinion and you are hereby advised that fifty percent of all fines and moneys arising from forfeited bonds collected under R.C. 4511.01 to R.C. 4511.78, R.C. 4511.99, and R.C. 4513.01 to R.C. 4513.37, inclusive, except those fines collected under R.C. 4513.263(B), from persons apprehended or arrested by township constables and other township police officers is to be paid, pursuant to R.C. 4513.35, into the township treasury to the credit of the general fund. The remaining fifty percent of such fines and moneys arising from forfeited bonds is distributed, pursuant to R.C. 3375.53, to the law library association. (1968 Op. Att'y Gen. No. 68-021, syllabus, paragraph two, overruled.)