

OPINION NO. 90-022**Syllabus:**

1. Mandatory drug fines collected under R.C. 2925.03 are excepted from the disbursement provisions of R.C. 3375.52 and R.C. 3719.21 and are paid, pursuant to R.C. 2925.03(J)(1), to the law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender, if such agencies have, or within thirty days of the collection of such fine have adopted, a written internal control policy, pursuant to R.C. 2925.03(J)(2), that addresses the use of the fine monies received. If a law

enforcement agency fails to adopt such a policy before or within thirty days after the collection of such fine, the fine must be paid, pursuant to R.C. 3719.21, on the thirtieth day to the executive director of the State Board of Pharmacy. (1989 Op. Att'y Gen. No. 89-103, syllabus, paragraph one; 1989 Op. Att'y Gen. No. 89-090, syllabus, paragraph four, modified.)

2. Fines assessed and collected under prosecutions commenced for violations of R.C. Chapters 2925 and 3719 are excepted from the disbursement provisions of R.C. 3375.52 and, pursuant to R.C. 3719.21, are paid to the executive director of the State Board of Pharmacy and by him paid into the state treasury to the credit of the general revenue fund with the exception of those mandatory drug fines, which are disbursed pursuant to R.C. 2925.03(J)(1). (1989 Op. Att'y Gen. No. 89-103, syllabus, paragraph two, modified.)

To: Frank Pierce, Belmont County Prosecuting Attorney, St. Clairsville, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, April 11, 1990

I have before me your request for my opinion concerning the distribution of drug related fines. Specifically, you ask:

[W]hether the fine monies from drug fines collected under Ohio Revised Code Section 2925 and 3719 are to be given to the pharmacy board, pursuant to Ohio Revised Code Section 3719.21 or do the monies go to the law library under the more general statute Ohio Revised Code Section 3375.52?

R.C. 3375.52, which requires clerks of the courts of common pleas and probate courts to make monthly disbursements to a county law library association, provides:

In each county of the state, all fines and penalties collected by, and moneys arising from forfeited bail in the court of common pleas and the probate court of such county, for offenses and misdemeanors brought for prosecution in such courts in the name of the state, shall be retained and paid monthly by the clerk of such courts to the board of trustees of the law library association. The total sums so paid therefrom shall not exceed twelve hundred fifty dollars per annum, and when that amount has been paid to such board, in accordance with this section, then no further payments shall be required under this section in that calendar year from the clerks of such respective courts.

This section does not apply to fines collected by a court of common pleas for violations of division (B) of section 4513.263 [4513.26.3] of the Revised Code, all of which shall be forwarded to the treasurer of state as provided in division (E) of that section.

After a clerk has paid the required twelve hundred fifty dollars to the county law library association pursuant to R.C. 3375.52, the clerk then must deposit all remaining fines, penalties, and moneys arising from forfeited bail collected under such section into the county treasury to the credit of the county general fund. 1989 Op. Att'y Gen. No. 89-103 at 2-496 and 2-497; see *Van Wert County Law Library Ass'n v. Stuckey*, 42 Ohio Op. 1, 6, 94 N.E.2d 32, 44 (C.P. Van Wert County 1949) ("[a]fter the maximum amounts payable to a law library association has been reached as provided by G.C. §3056-2 [now R.C. 3375.52]...all other monies resulting from violations of the state criminal laws shall be paid to the county treasury to the credit of the general fund"). See generally R.C. 2937.36(A) (forfeited bail treated as if it were a fine); R.C. 2949.11 (collected fines are deposited into the treasury of the county to the credit of the general fund, unless otherwise required by law).

In Op. No. 89-103, I also addressed the conflict between R.C. 3375.52 and R.C. 3719.21, which controls the disposition of a specific subcategory of fines collected in the court of common pleas. Under R.C. 3719.21,

[a]ll fines or forfeited bonds assessed and collected under prosecutions or prosecutions [sic] commenced for violations of Chapters 2925. and 3719. of the Revised Code, shall within thirty days, be paid to the executive director of the state board of pharmacy and by him paid into the state treasury to the credit of the general revenue fund.

R.C. 3719.21, thus controls the disbursement of all fines and forfeited bonds assessed and collected under prosecutions commenced for violations of R.C. Chapters 2925 and 3719, some of which are collected in courts of common pleas. Utilizing the general rules of statutory construction that a specific statute excepts a general statute enacted earlier in time, *see* R.C. 1.51, and that the General Assembly has knowledge of prior legislation when it enacts subsequent legislation, *see State v. Frost*, 57 Ohio St. 2d 121, 125, 387 N.E.2d 235, 238 (1979), I concluded that:

Fines assessed and collected under prosecutions commenced for violations of R.C. Chapters 2925 and 3719 are excepted from the disbursement provisions of R.C. 3375.52 and, pursuant to R.C. 3719.21, are paid to the executive director of the State Board of Pharmacy and by him paid into the state treasury to the credit of the general revenue fund with the exception of mandatory drug fines,¹ which are disbursed pursuant to R.C. 2925.03(J).

Op. No. 89-103 (syllabus, paragraph two) (footnote added).

Since the issuing of Op. No. 89-103, neither R.C. 3375.52 nor R.C. 3719.21 has been amended by the General Assembly. Hence, I continue to agree with the reasoning set forth in Op. No. 89-103, and reaffirm the proposition therein that "R.C. 3719.21 creates an exception to R.C. 3375.52 with respect to the disbursement of fines collected in a court of common pleas for prosecutions under R.C. Chapters 2925 and 3719." Op. No. 89-103 at 2-504.

However, as indicated above, mandatory drug fines collected under R.C. 2925.03 are excepted from the disbursement provisions of both R.C. 3375.52 and R.C. 3719.21. More specifically,

[m]andatory drug fines collected under R.C. 2925.03 are excepted from the disbursement provisions of R.C. 3375.52 and R.C. 3719.21 and are paid, pursuant to R.C. 2925.03(J), to the law enforcement agencies in this state that were primarily responsible for or involved in making the arrest of, and in prosecuting, the offender. (1989 Op. Att'y Gen. No. 89-090, syllabus, paragraph four, followed.)

Op. No. 89-103 (syllabus, paragraph one). Applying the general rule of statutory construction that a special statute excepts an earlier enacted general statute to the extent of any irreconcilable conflict between their provisions, I found in Op. No. 89-103 that R.C. 2925.03(J) is a later enacted special provision which excepts both R.C. 3375.52 and R.C. 3719.21 with respect to the disbursement of mandatory drug fines. Op. No. 89-103 at 2-503 and 2-504; *see* R.C. 1.51 (a special provision prevails as an exception to a general provision when an irreconcilable conflict between the two exists); *see also* Op. No. 89-090 (syllabus, paragraph four) (mandatory drug fines are excepted from the disbursement provisions of R.C. 3719.21).

¹ Mandatory drug fines are only those fines authorized and imposed by division (H) of R.C. 2925.03. 1989 Op. Att'y Gen. No. 89-090 at 2-428 n. 1; *see also* 1989 Op. Att'y Gen. No. 89-103 at 2-502 n. 11.

I note, however, that since the issuing of Op. No. 89-103, R.C. 2925.03(J) has been amended by the General Assembly. As of April 11, 1990, R.C. 2925.03(J) requires that mandatory drug fines

be paid to the law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender. *However, no such fine shall be paid to a law enforcement agency unless the agency has adopted a written internal control policy under division (J)(2)² of this section that addresses the use of the fine moneys that it receives.* The mandatory fines shall be used to subsidize each agency's law enforcement efforts that pertain to drug offenses, in accordance with the written internal control policy adopted by the recipient agency under division (J)(2) of this section that addresses the use of the fine moneys that it receives.

Am. Sub. H.B. 215, 118th Gen. A. (1989) (eff. April 11, 1990) (emphasis and footnote added). R.C. 2925.03(J), as amended by Am. Sub. H.B. 215, now conditions a law enforcement agency's receipt of mandatory drug fines upon the agency's adoption of a written internal control policy that addresses the agency's use and disposition of all such fines received.

² Newly enacted R.C. 2925.03(J)(2), provides:

(a) Prior to receiving any fine money under division (J)(1) of this section, a law enforcement agency shall adopt a written internal control policy that addresses the agency's use and disposition of all those fine moneys received and that provides for the keeping of detailed financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys received, and the specific amount of each general type of expenditure. The policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation. A written internal control policy adopted under this division is a public record open for inspection under section 149.43 of the Revised Code. Each agency that adopts a written internal control policy under this division shall comply with the policy as it relates to all fine moneys so received. All financial records of the receipts of those fine moneys, the general types of expenditures out of those fine moneys received, and the specific amount expended on each general type of expenditure by an agency are public records open for inspection under section 149.43 of the Revised Code.

(b) Each law enforcement agency that receives in any calendar year any fine money under division (J)(1) of this section shall prepare a report covering the calendar year that cumulates all of the information contained in all of the public financial records kept by the agency pursuant to division (J)(2)(a) of this section for that calendar year, and shall send a copy of the cumulative report, no later than the first day of March in the calendar year following the calendar year covered by the report, to the attorney general. Each such report so received by the attorney general is a public record open for inspection under section 149.43 of the Revised Code. The attorney general shall make copies of each such report so received, and, no later than the fifteenth day of April in the calendar year in which the reports were received, shall send a copy of each such report to the office of the president of the senate and the office of the speaker of the house of representatives.

Am. Sub. H.B. 215, 118th Gen. A. (1989) (eff. April 11, 1990).

A review of R.C. 2925.03(J), as amended by Am. Sub. H.B. 215, clearly reveals that a law enforcement agency that has adopted a written internal control policy covering the agency's use of any mandatory drug fines it receives must be paid any such fine to which it is entitled. *See generally Dorrian v. Scioto Conserv. Dist.*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph one) ("shall" is generally interpreted as imposing a mandatory duty). An irreconcilable conflict, thus, exists between the special provisions of R.C. 2925.03(J) and the general provisions of R.C. 3375.52 and R.C. 3719.21 with respect to the disbursement of mandatory drug fines to which a law enforcement agency has a claim because it has adopted a written internal control policy addressing the agency's use of any such fines it receives. Accordingly, the later enacted special disbursement provisions of R.C. 2925.03(J), as amended by Am. Sub. H.B. 215, still prevail as an exception to the general disbursement provisions set forth in R.C. 3375.52 and R.C. 3719.21 with respect to the disbursement of mandatory drug fines when a law enforcement agency has adopted a written internal control policy which covers the agency's use of any fines it receives.

R.C. 2925.03(J), as amended by Am. Sub. H.B. 215, however, contains no express provisions governing the disbursement of mandatory drug fines when a law enforcement agency has not adopted a written internal control policy that addresses the agency's use of the fines it receives. Hence, no irreconcilable conflict exists between the special provisions of R.C. 2925.03(J) and the general provisions of R.C. 3719.21 with respect to the disbursement of these fines.³ The question, thus, becomes whether these fines are to be held for disbursement, pursuant to R.C. 2925.03(J)(1), until such agency has adopted a policy, or disbursed, pursuant to R.C. 3719.21, within thirty days of collection, to the executive director of the State Board of Pharmacy.

In construing these statutes, I am guided by the "rule of statutory construction, codified in R.C. 1.51, that where there is no irreconcilable conflict, special and general provisions should be construed so as to give effect to both provisions." *Mechanical Contractors Ass'n v. State*, 64 Ohio St. 2d 192, 196, 414 N.E.2d 418, 421 (1980); *see, e.g., R.C. 1.51* ("[i]f a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both"); *accord State v. Darrah*, 64 Ohio St. 2d 22, 25, 412 N.E.2d 1328, 1330 (1980); *State v. Frost*, 57 Ohio St. 2d at 124, 387 N.E.2d at 237; *City of Cincinnati v. Conner*, 55 Ohio St. 82, 88-89, 44 N.E. 582, 583-84 (1896). R.C. 2925.03(J)(1) requires the distribution of mandatory drug fines "to the law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender," once they have adopted a written internal control policy that addresses their use of the fines received. R.C. 2925.03(J)(1), thus, conditions the disbursement of mandatory drug fines to a law enforcement agency upon such agency's adoption of a written internal control policy. If this condition is not met, such fines may not be disbursed to the local law enforcement agency. The section, however, does not impose a time limit within which a law enforcement agency must adopt a policy.

³ Mandatory drug fines are assessed and collected from individuals convicted under the drug trafficking provisions of R.C. 2925.03. Since mandatory drug fines result from prosecutions under R.C. Chapter 2925, any such fine collected is subject to disbursement under R.C. 3719.21, unless specifically excepted from such section and disbursed pursuant to the special provisions of R.C. 2925.03(J). As determined above, R.C. 3719.21 creates an exception to R.C. 3375.52 with respect to the disbursement of any fines collected for prosecutions under R.C. Chapter 2925. Mandatory drug fines, thus, are either disbursed under R.C. 2925.03(J) or R.C. 3719.21. Consequently, in determining the distribution of mandatory drug fines to which a law enforcement agency has no claim because it has failed to adopt the required policy, I need only consider the disbursement provisions of R.C. 2925.03(J) and R.C. 3719.21.

R.C. 3719.21, however, requires the disbursement of all fines collected from prosecutions under R.C. Chapter 2925 within thirty days to the executive director of the State Board of Pharmacy. Thus, in order to give effect to the provisions of R.C. 3719.21 it is necessary to distribute any mandatory drug fine not disbursed to a law enforcement agency, pursuant to R.C. 2925.03(J)(1), within thirty days to the aforementioned executive director.

In analyzing both statutes in such a manner as to give effect to both, I find that R.C. 3719.21 supplements R.C. 2925.03(J) in that it provides a reasonable period of time for a law enforcement agency to adopt a written internal control policy that addresses the agency's use of any fines it receives. Accordingly, mandatory drug fines are disbursed to law enforcement agencies if such agencies have adopted within thirty days of the collection of such fines a written internal control policy which addresses the use of any such fine monies that it receives. If such agency fails to adopt the required policy within thirty days of the collection of such fine, the fine must be paid, pursuant to R.C. 3719.21, on the thirtieth day to the executive director of the State Board of Pharmacy.

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

1. Mandatory drug fines collected under R.C. 2925.03 are excepted from the disbursement provisions of R.C. 3375.52 and R.C. 3719.21 and are paid, pursuant to R.C. 2925.03(J)(1), to the law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender, if such agencies have, or within thirty days of the collection of such fine have adopted, a written internal control policy, pursuant to R.C. 2925.03(J)(2), that addresses the use of the fine monies received. If a law enforcement agency fails to adopt such a policy before or within thirty days after the collection of such fine, the fine must be paid, pursuant to R.C. 3719.21, on the thirtieth day to the executive director of the State Board of Pharmacy. (1989 Op. Att'y Gen. No. 89-103, syllabus, paragraph one; 1989 Op. Att'y Gen. No. 89-090, syllabus, paragraph four, modified.)
2. Fines assessed and collected under prosecutions commenced for violations of R.C. Chapters 2925 and 3719 are excepted from the disbursement provisions of R.C. 3375.52 and, pursuant to R.C. 3719.21, are paid to the executive director of the State Board of Pharmacy and by him paid into the state treasury to the credit of the general revenue fund with the exception of those mandatory drug fines, which are disbursed pursuant to R.C. 2925.03(J)(1). (1989 Op. Att'y Gen. No. 89-103, syllabus, paragraph two, modified.)