



OFFICES OF THE
ATTORNEY GENERAL OF MISSOURI
JEFFERSON CITY

JOHN C. DANFORTH
ATTORNEY GENERAL

November 9, 1972

OPINION LETTER NO. 193

Honorable William H. Bolinger
Prosecuting Attorney
Morgan County
East Newton Street
Versailles, Missouri 65084

Dear Mr. Bolinger:

This letter is in response to your request for an opinion asking whether it is proper to deduct magistrate fees and certain other court costs (including sheriff's fees and witnesses' fees) from bail forfeitures before transferring the proceeds of same to the county treasurer for school uses as required by Article IX, Section 7, Constitution of Missouri.

Article IX, Section 7 of the Missouri Constitution states in part:

" . . . All interest accruing from investment of the county school fund, the clear proceeds of all penalties, forfeitures and fines collected hereafter for any breach of the penal laws of the state, the net proceeds from the sale of estrays, and all other moneys coming into said funds shall be distributed annually to the schools of the several counties according to law."

Further, Section 166.131, RSMo 1969, states in part:

" . . . Annually, on or before August thirty-first, in each county of the state all interest accruing from the investment of the capital of the county school fund, if any, the

clear proceeds of all penalties, forfeitures and fines collected for any breach of the penal laws of the state, the net proceeds from the sale of estrays, and all other money lawfully coming into the fund, shall be collected and distributed to the school districts of the county by the county clerk upon the basis of the last enumeration on file in his office.

.. ."

The Missouri cases which have interpreted the "clear proceeds" provision of what is now Article IX, Section 7, held that the legislature may authorize deductions from the gross proceeds in certain instances. For example, in State v. Wabash, St. L. & P. Ry. Co., 1 S.W. 130 (Mo. 1886), the Missouri Supreme Court was confronted with a statute which provided that one-half of the penalty in a case where an individual failed to ring a bell or sound a whistle at a public crossing went to the informer. Our court held that the Missouri Legislature,

"... in imposing penalties for violation of its laws, may, in its discretion, for the purpose of securing the enforcement of said laws, the collection of the penalties imposed, and paying the expenses thereof, give a part thereof to an informer, and, in such case, what is thus realized constitutes the 'clear proceeds of said penalties,' .. ."

See also, State v. Missouri Pac. Ry. Co., 50 S.W. 278 (Mo. 1899). Thus, the court held that the state legislature could, to some extent, determine what was to be deducted from fines and forfeitures before same constituted "clear proceeds" for school uses. In State v. Warner, 94 S.W. 962, 966 (Mo. 1906), the Supreme Court of Missouri was confronted by a statute which provided that fines and forfeitures resulting from violations of certain fish and game laws were to be put by the county treasurer into a fund called Game Protection Fund. A county treasurer received a fine arising from such a violation and applied it to the school fund. A mandamus suit was brought against him to compel him to dispose of the money in accordance with the fish and game statutes. The defense was that the statute was in violation of the constitutional "clear proceeds" provision. The Supreme Court found the statute to be an unconstitutional infringement upon the Constitution. We quote from that case:

"(c) But where fines and penalties are prescribed as a punishment for a violation of public rights, i.e., crimes, and such penalties or fines are to be recovered by public

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authority, the disposition of such recovered fines or penalties comes within the constitutional provision under consideration, and they may not be turned awry from the prescribed constitutional course. (d) And, under the last hypothesis, the question of 'clear proceeds' confronts us. It seems, though that question is not in this case and is not decided, that a criminal statute might devote a reasonable portion of recovered fines and penalties by way of incentive or spur to officers in collecting them and enforcing the law; and that, after such appropriation of a part, the part remaining might be considered 'clear proceeds' under the Constitution, and go to the public school fund in obedience to, and full satisfaction of, its mandate."

We have concluded that the Supreme Court of Missouri, based on previous case law, has upheld some deductions from fines and forfeitures prior to their being transferred to the county treasury school fund. It is clear however that no deductions may be made from such fines or forfeitures unless there is express statutory authority for such deductions.

This office held in Opinion No. 80, 1970, (copy enclosed) that the provisions of Section 56.310, RSMo, authorize the deduction of the specific fees for prosecuting attorneys in such section in determining the clear proceeds of bond forfeitures because such section provides a specific fee to be paid to the prosecuting attorney for his services in bond forfeiture proceedings. In this case we find no statutes providing for deductions to be made from bail forfeitures for the purpose of paying magistrate fees, sheriff's fees, or witnesses' fees and none have been cited to us. Notably, such charges are usually taxed as costs to be levied above and beyond the amount of any forfeiture in a criminal proceeding.

Therefore, in the absence of any express authorization for the deduction of such costs we conclude that such costs may not be deducted from the amount of bail forfeitures.

Very truly yours,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 80
8-7-70, Gilmore