

LETTER OPINION
97-L-124

August 7, 1997

Mr. Dennis E. Johnson
McKenzie County State's Attorney
PO Box 1288
Watford City, ND 58854-1288

Dear Mr. Johnson:

Thank you for your letter asking whether "traffic ticket collections" should be reported by your county treasurer to the State Treasurer as "statutory fees, fines, forfeitures, and pecuniary penalties" for deposit to the state school fund or "bail bond or other property or money deposited as bail" for deposit to the general fund, under N.D.C.C. § 29-27-02.1.

The term "statutory fee" apparently came into being in 1973 when the Legislature enacted 1973 N.D. Sess. Laws ch. 301, § 16 as part of the establishment of noncriminal treatment for minor traffic offenses. "Statutory fees" are charged for violations of noncriminal traffic offenses under N.D.C.C. ch. 39-06.1. N.D.C.C. § 39-06.1-02 describes how the fee may be paid at an appearance before a magistrate, or how "bond" may be deposited and forfeited. The "bond" under N.D.C.C. § 39-06.1-02 must be the same amount of money as the statutory fee imposed for the violation. The amount of statutory fees is provided in N.D.C.C. § 39-06.1-06.

For noncriminal traffic violations, i.e., those not listed in N.D.C.C. § 39-06.1-05, the stop and citation procedures do not include arrest of the traffic violator. N.D.C.C. §§ 39-07-07 and 39-07-08. Therefore, the bond referred to in N.D.C.C. § 39-06.1-02 is a bond to secure a later appearance to answer for the traffic violation, and is not a bond to be released from custody.

For traffic offenses that are included in N.D.C.C. § 39-06.1-05, the stop and citation procedures involve an arrest and being taken into custody. To be released from custody one may be required to provide a bail bond. "Bail" means "the security required and given for the release of a person who is in the custody of the law that he will appear before any court in which his appearance may be required. . . ." N.D.C.C. § 29-08-01. Bail bonds are dealt with in Rule 46, North Dakota Rules of Criminal Procedure.

Mr. Dennis E. Johnson
August 7, 1997
Page 2

Traffic ticket collections and fines for violation of state laws are paid by county treasurers to the State Treasurer using the State Treasurer's form (now known as SFN 10247, Rev. 06-97). N.D.C.C. §§ 15-44-02 and 29-27-02.1. If the traffic offense charged is one of the noncriminal offenses for which a statutory fee is paid under N.D.C.C. ch. 39-06.1, that statutory fee is deposited according to the first sentence of N.D.C.C. § 29-27-02.1. If a bond under N.D.C.C. ch. 39-06.1 is posted and forfeited, then it is a forfeiture which is also deposited according to the first sentence of N.D.C.C. § 29-27-02.1. For these noncriminal traffic offenses, both the statutory fees paid and the bonds forfeited in the same amount as the statutory fees are reported to the State Treasurer as payable to the state school fund. For criminal traffic offenses listed in N.D.C.C. § 39-06.1-05, the fine paid for the offense is reported as payable to the state school fund pursuant to the first sentence of N.D.C.C. § 29-27-02.1. If as part of that criminal offense listed in N.D.C.C. § 39-06.1-05 a bail bond posted is declared forfeited by the court, that bail bond amount is reported by the county treasurer to the State Treasurer as a forfeited bail bond under the second sentence of N.D.C.C. § 29-27-02.1 and is payable to the state general fund.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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