

August 2010

DISPOSITION OF FINES, FEES, AND FORFEITURES

This memorandum summarizes the constitutional and statutory requirements for the disposition of statutory fines, fees, and forfeitures collected for violations of state laws. This memorandum also addresses whether the fees imposed under North Dakota Century Code Section 39-12-08 constitutionally are required to be deposited in the fund commonly referred to as the common schools trust fund. Section 39-12-08 authorizes the imposition of a fee of \$100 for the operation of certain motor vehicles under Chapter 39-12 without a special permit for vehicles of excessive size and weight and a \$20 fee for violating any other provision of the chapter for which a specific penalty is not provided.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Section 2, Article IX, of the Constitution of North Dakota, provides:

Distributions from the common schools trust fund, together with the net proceeds of **all fines for violation of state laws** and all other sums which may be added by law, must be faithfully used and applied to each year for the benefit of the common schools of the state and no part of the fund shall ever be diverted, even temporarily, from this purpose or used for any purpose other than the maintenance of common schools as provided by law. (emphasis supplied)

This constitutional provision is implemented by Section 15.1-28-01, which provides that "[t]he net proceeds of fines for the violation of state laws . . . must be paid into the state treasury and constitute the state tuition fund." This constitutional provision also is implemented by Section 29-27-02.1, which provides that "[e]xcept as otherwise provided by law, all statutory fees, fines, forfeitures, and pecuniary penalties prescribed for a violation of state laws, when collected, must be paid into the treasury of the proper county to be added to the state school fund. When any bail bond or other property or money deposited as bail is forfeited to the state, the proceeds collected therefrom must be paid over to the proper state official and credited to the state general fund."

Under Section 40-11-13, all fines and penalties collected for offenses against city ordinances are paid to the city treasury. Because a violation of an ordinance is not a violation of a state law, Section 29-27-02.1 does not apply to a city ordinance.

Under Section 39-12-02, fees associated with vehicles of excessive size and weight are deposited in the state highway fund.

NORTH DAKOTA SUPREME COURT DECISIONS

The North Dakota Supreme Court twice has addressed Section 2, Article IX, of the Constitution of North Dakota, and the issue of the disposition of statutory fines, fees, and forfeitures collected for violations of state laws.

In 1914 the North Dakota Supreme Court, in *State v. Bickford*, 147 N.W. 407 (N.D. 1914), considered a statute that required embezzlers of public funds to pay the injured governmental unit a sum equal to twice the amount of the embezzlement. The Supreme Court ruled that because the primary purpose of the payment was to punish the offender, the fine must be deposited in the school fund pursuant to Section 2, Article IX. The Supreme Court also found that payments that sought to provide restitution or compensation were not intended to be included under the constitutional provision.

In a 1992 decision, *State ex rel. Backes v. Motor Vehicle Described as a Pawling & Harnishefeger*, 492 N.W.2d 595 (N.D. 1992), the North Dakota Supreme Court addressed a challenge to the constitutionality of Sections 39-12-20 and 24-02-41. Section 39-12-17 provides that a court must assess charges on a pro rata basis against a vehicle that has violated highway weight limitations. Section 24-02-41 requires these proceeds to be deposited into the state highway fund. If the charges and costs provided for by Section 39-12-17 are not paid, the state may confiscate and sell the offending vehicle. Under Section 39-12-20, the proceeds of a confiscation sale must be applied to payment of the costs of the proceeding and the charges assessed against the vehicle. The appellant asserted that overload fees or charges are actually fines for the violation of state laws which should be deposited into the common schools trust fund. The Supreme Court concluded that the phrase "fines for violation of state laws" referred to in Section 2, Article IX, does not encompass civil penalties, such as overweight vehicle charges. The Supreme Court looked to similar decisions in Nebraska and Illinois for guidance. The Supreme Court noted that these states have held that a "fine" is a pecuniary punishment for a violation of a law and relates to a criminal offense. The Supreme Court also noted that the Nebraska Supreme Court, in reviewing a constitutional provision similar to the North Dakota provision, interpreted the phrase "fines, penalties, and license moneys" to encompass "fines imposed in the punishment of crimes and misdemeanors, exactions imposed for violations of ordinances and regulations growing out of the exercise of the police power and having the characteristics of a criminal proceeding. . . ."

The North Dakota Supreme Court concluded that the overload charges in this case were for the extraordinary use of the highway and that the primary purpose of assessing the charges was to compensate the state for possible damage to its highways. It noted that the proceedings are civil in nature and that many of the statutes in Chapter 39-12 describe the payments as "charges," not fines. The Supreme Court concluded that Sections 39-12-20 and 24-02-41 were not in violation of Section 2, Article IX, of the Constitution of North Dakota.

CONCLUSION

As discussed previously, Section 29-27-02.1, which implements Section 2, Article IX, of the Constitution of North Dakota, provides that "[e]xcept as otherwise provided by law, all statutory fees, fines, forfeitures, and pecuniary penalties prescribed for a violation of state laws, when collected, must be paid into the treasury of the proper county to be added to the state school fund." This section authorizes the Legislative Assembly to create an exception for the deposit of those fees, fines, forfeitures, or pecuniary penalties that are not required by the Constitution of North Dakota to be deposited into the common schools trust fund.

Also as discussed previously, Section 39-12-08 authorizes the imposition of a fee of \$100 for the operation of certain motor vehicles under Chapter 39-12 without a special permit for vehicles of excessive size and weight and a \$20 fee for violating any other provision of the chapter for which a specific penalty is not provided. The North Dakota Supreme Court's decision in *State ex rel. Backes v. Motor Vehicle Described as a Pawling & Harnishefeger* concluded that the fees imposed under Section 39-12-20 were for the extraordinary use of the highways, were the result of a civil proceeding, were not punitive in nature, and the deposit of those fees into the state highway fund rather than the common schools trust fund was not in violation of the constitutional provision. Consistent with the Supreme Court's opinion, it could be argued that the fees imposed by Section 39-12-08 are of a similar nature to those imposed in Section 39-12-20. The fees in Section 39-12-08 also are the result of a civil proceeding, are not punitive in nature, and are being assessed to compensate the state for the vehicle owner's extraordinary use of the state's highways. With a specific statutory exemption for the deposit of the fees collected under Section 39-12-08, it is likely that the deposit of these fees into a fund other than the common schools trust fund would not be a violation of the constitutional provision.