



STATE OF KANSAS

*Office of the Attorney General*

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CURT T. SCHNEIDER  
Attorney General

April 21, 1975

Opinion No. 75-167

Mr. Robert A. Bloomer  
Assistant City Attorney  
City of Downs  
202 West Main Street  
Osborne, Kansas 67473

Dear Mr. Bloomer:

Your letter inquires as to the proper procedure for the disposition of fines and court costs which are assessed against a defendant by the District Court on appeal from a municipal court action charging violation of a municipal ordinance. Specifically you query whether the fines and costs levied against a defendant by the District Court in such circumstances belong to the city or whether they constitute property of the county which must be transmitted to the state treasurer for deposit in the school equalization fund. K.S.A. §§20-2801 and §§72-7069.

An analysis of Kansas precedent reveals that the District Court, in performing its appellate duties from municipal court judgments, acts as a municipal court in all respects.

In re Sanford, 117 Kan. 750, 752, 232 P. 1053 (1925) concisely explained the nature of the District Court's appellate function, in observing:

"It is true that the judgment finally entered against the respondent was rendered by the district court on an appeal from the police court. In the district court the case, however, was tried as a violation of a city ordinance, and while that court was trying the case it was acting as a police judge, and was required to try the case in the same manner it should

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have been tried before the police judge. . ."  
See also City of Fort Scott v. Arbuckle,  
165 Kan. 374, 196 P.2d 217 (1948).

In light of the foregoing recitation, it is apparent that all fines levied and collected by the district court while acting in its capacity as a municipal court constitute the property of the municipality. A decision to the contrary would create the anomalous result that a penalty prescribed by municipal ordinance to deter violations of specific municipal laws would ultimately fill the coffers of a separate and distinct sovereignty, i.e. the state, whose laws have not been transgressed. Such a result could not have been intended for it would erode effective municipal law enforcement by eliminating a city's incentive to enforce its own policies and programs. Although the burdens and expenses of enforcing municipal ordinances would fall entirely upon the municipality, it would be precluded from obtaining even token reimbursement by the random and fortuitous decision of a particular person to file an appeal.

K.S.A. 1974 Supp. 72-7069 does not avail the county in its contention that such fines become the property of the state (county) for eventual placement in the school equalization fund. This section provides as follows:

"Notwithstanding any other provision of law, the county treasurer shall collect all monies due the county from fines, penalties and forfeitures. The officers of each court of this state shall pay all of the proceeds of fines, penalties and forfeitures to the county treasurer who shall remit the same to the state treasurer, and the state treasurer shall deposit the same in the state treasury to the credit of the state school equalization fund. Nothing in this section shall be construed to affect any monies collected by a municipal court."

See also K.S.A. 20-2801.

Since under the established precedent of prior Supreme Court cases, a district court in these circumstances acts in all

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respects as a municipal court and its judgment is that of a municipal court, it follows that the last line of §§72-7069 exempts the sums collected from transmission to the state school fund. The fines levied are in effect assessed by a municipal court, and must therefore be held on behalf of the particular municipality.

The analysis concerning disposition of costs assessed by the district court in its municipal role approximates, but is not identical to, the reasoning and result reached above. K.S.A. 22-3611 provides that if a defendant is convicted in the district court on appeal, "the district court shall impose sentence upon him and render judgment against him for all costs in the case, both in the district court and in the court appealed from." (emphasis added). This provision is mandatory in fact and preserves the fiscal integrity of the district court by authorizing it to collect the costs it has incurred during its appellate role. Clearly therefore, the provision contemplates that an assessment of costs shall be sufficient to cover all governmental expenses incurred in the litigation and shall thereafter be properly divided between the city and the county in strict accordance with the cost figures as incurred by each jurisdiction.

Therefore, it is the opinion of this office that when a district court assesses a fine and costs against an individual upon appeal from a prior municipal court conviction, all fines collected must be remitted to the municipality together with those costs properly incurred by it during the litigation.

Very truly yours,



CURT T. SCHNEIDER  
Attorney General

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