PUBLIC DOCUMENTS

OF THE

STATE OF MAINE

BEING THE

REPORTS

OF THE VARIOUS

PUBLIC OFFICERS
DEPARTMENTS AND
INSTITUTIONS

FOR THE TWO YEARS

JULY 1, 1930 - JUNE 30, 1932

STATE OF MAINE

REPORT

OF THE

Attorney General

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for the calendar years

1931-1932

The last sentence of ch. 252 requires in effect the payment "forthwith to the treasurer of state" of all sums coming into court "except those payable by law to the county." These sums, awarded in favor of state highway policemen or inspectors, are, by this very chapter, not "payable by law to the county," but belong to the state. Were they paid to the county the state would, of course, have its claim against the county contrary to one object which the statute sought to accomplish, and contrary, it seems to me, to the wording as it reads in the light of this legislative purpose.

It seems to me, therefore, that these costs now under discussion should be paid directly to the State Treasurer.

FEES, FINES AND FORFEITURES

April 5, 1932

To Hon. E, D. Hayford
State Auditor

Whether one-half or all the costs in favor of state highway policemen are to be paid to the state was not the primary inquiry in my letter of Dec. 4, 1931, to the judge of the municipal court at Farmington. On further consideration of that problem I am of the opinion that all these costs and not merely one-half of them belong to the state. The legislature was not concerned with dividing costs between state and county, but with dividing fines and forfeitures, and assuring the state treasury of getting the sums awarded for state police costs.

It seems to me that bail is a forfeiture and when collected in any case within the context of P. L. 1931, ch. 189 and 252, half belongs to the county and half to the state.

Under the law it is for the prosecuting attorney to collect defaulted bail. Unless and until he has collected it the liability of the county to pay over a portion of it to the state has obviously not accrued.

Similarly, there is no liability on the part of a judge or trial justice to pay over fines or costs imposed until they have been collected and paid to him. The payment of fines and costs is sometimes suspended under probationary arrangements.

I find no provision of law for the payment by the county to the state of costs assessed in favor of state officers which have not been collected by the county. As between a county and a city within its territory costs assessed in favor of city police officers are sometimes credited to the city in adjusting accounts between the county and the city, but I do not find any legislative intention that costs assessed in favor of state highway police are to be paid to the state by the county unless these have been paid in to the county treasury.

Fees of witnesses and officers who are entitled to receive for their own use costs assessed in a criminal case, are properly paid to them

from the county treasury, regardless of whether the costs so assessed have been actually paid by the convicted person. Costs accruing in favor of the state in respect to the state highway police seem to me to stand on a different footing.

NAPHTHA AND THE GASOLINE TAX

October 19, 1931

To Hon. E. D. Hayford
State Auditor

You inquire with reference to the taxability of naphtha under the gasoline tax act.

Sec. 1 of the act in classifying the "internal combustion engine fuel," which by sec. 2 of the act is taxable when "sold within this state," defines three kinds of "motor fuel," viz.:

(a) Gasoline.
(b) Benzol.
(c) Other products except kerosene and crude oil to be used in the operation of an internal combustion engine.

All sales of classes (a) and (b) are taxable. Class (c) is composed of two special products whose sales are never taxable, and of other products whose sales are taxable only under the special circumstances there specified.

This department has in the past, as you know, ruled that "naphtha" falls within class (c). Unlike kerosene and crude oil it is taxable if sold to be "used in the operation of an internal combustion engine", but unlike gasoline and benzol it is taxable only when so sold. Naphtha sold for cleansing purposes, not being an "internal combustion engine fuel" within the statutory definition, is not taxable.

Sec. 2 of the act provides for the rebate of three-fourths and "no more" of the tax paid,—

> "Upon such internal combustion engine fuels sold for exclusive use in motor boats, tractors used for agricultural purposes not operating on public ways or in such vehicles as run only on rails or tracks, or sold for use in stationary engine or sold for use in the mechanical or industrial arts."

This section applies only to taxable fuels; that is,—(a) gasoline, (b) benzol, (c) certain other products sold for the special use specified in the definition of the class. Three-quarters of the tax paid on such fuels is to be rebated in certain cases. The section does not affect the right of a tax payer to a refund of a mistaken payment.

Since naphtha sold for a purpose not specified in the definition of its class (e. g. for cleansing) is absolutely untaxable, the whole amount of any tax mistakenly paid on such naphtha should be refunded.