

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

December 3, 1947

To Linwood F. Crockett, Esq., Clerk of Courts, Cumberland County
Re: Witness Fees, State Police

. . . The pressure of work here at the office while the Attorney General was away has prevented me from responding earlier to your inquiry. . . . Your question concerned the disposition of fees taxed for State Police as either arresting officers or witnesses in prosecutions under the motor vehicle law. Section 134 of Chapter 19 is the one about which you expressed doubt. You brought to my attention the various changes that this section has undergone, beginning with the Revised Statutes of 1930.

This section provides that all fines and forfeitures collected under the provisions of that chapter shall accrue to the county where the offense is prosecuted. The cases hold that the words, "fine" and "forfeiture", when used as a punishment for a statutory offense, are used synonymously and mean the same thing. See *Commonwealth v. Novak*, 272 Mass. 133; *State vs. McConnell*, 70 N. H. 58, and other cases collected in "Words and Phrases, Permanent Edition," volume 17 at page 323.

In *Ryan v. State*, 176 Ind. 281, the words "fines and forfeitures," as contained in the Constitution and statutes of that State, authorizing the Governor to remit such fines and forfeitures as may be prescribed by law, do not include costs in a criminal case. That Court quoted *Anglea v. Commonwealth* (1853), 10 Gratt. (Va.) 696:

"The fine is imposed for the purpose of punishment. *** But with regard to costs it is different. They are exacted simply for the purpose of reimbursing to the public treasury the precise amount which the conduct of the defendant has rendered it necessary should be expended for the vindication of the public justice of the state and its violated laws. *** The right to enforce payment of them is a mere incident to the conviction, and thereby vested in the commonwealth for the sole purpose of replacing in the treasury the amount which the defendant himself has caused to be withdrawn from it. And it can make no substantial difference whether the money is going directly to the witnesses and others who are entitled to be paid for their services in the prosecution, or the commonwealth having paid them, stands by substitution in their place."

While it is true that when the judgment of the court is a fine and costs, the respondent, in order to comply with the sentence, is obliged to pay the total fine and costs, it does not necessarily follow that the total costs will accrue to the county. Unquestionably, if under this chapter the arresting officer was a constable or deputy sheriff, the county treasurer would not retain the costs taxed for them, but would pay it to them. Likewise, the county treasurer would be obliged to pay it to the State Police, except that Section 5 of Chapter 13 (amended by P. L. 1947, Chapter 385, not pertinent to this inquiry) provides that the State Police shall not receive any fee as a complainant or witness or for making an arrest or for attendance at court. It does provide, however, that such fees may be taxed as costs for such complainant or witness in the usual manner.

By the second section of Chapter 13, such fees shall be taxed on a bill of costs (for a State Police officer) and shall accrue to the Treasurer of State. Without this provision and that contained in the end of Section 5, the State Police officer would be entitled to receive these fees; the legislature, however, has diverted them to the State Treasurer. I can therefore see no inconsistency in these provisions, as when read together, which they should be, it is clear that the taxable costs for these officers go to the State Treasurer. I think that this view is also confirmed by Section 5 of Chapter 137 by which clerks of courts are required to pay the fines, costs and forfeitures collected to the treasurer of the county, and the county treasurer is then, upon approval of the county commissioners, required to pay to the State, town, city or persons any portion of the fines, costs and forfeitures that may be due.

ABRAHAM BREITBARD
Deputy Attorney General

December 3, 1947

To General George M. Carter, Adjutant General
Re: Wages and Subsistence—Emergency

Receipt is acknowledged of your memo dated November 20th concerning the obligation of local communities to be responsible for the payment of wages and subsistence of National Guard units, when the communities called for their assistance or when National Guard units were sent to assist the civil officers in protecting property in the fire areas.

It is my opinion that under the present law municipalities have no obligation to pay the compensation of these men or for their rations. I have done some research, although I have not examined with particular care the various enactments since 1857, because I have felt that it would not serve any purpose in view of the changes recently made and hereinafter referred to. I start with 1857, because in that Revision, under Chapter 10, Section 92, provision was made, where troops were sent into a city or town, that such city or town shall cause suitable provisions, quarters and ammunition to be furnished to such troops, "and the expenditures therefor shall be reimbursed by the State."

The military laws were omitted by special act from the Revisions of the Statutes which followed in 1871, 1883 and 1903, although the revised acts dealing with this subject in the various session laws which followed thereafter were retained as these Revisions were adopted.

In 1916, and again in 1930, the military laws were again included in the Revised Statutes. I find that under Chapter 18 of the latter, Section 46 was made up of two paragraphs, of which the first provided for the allowance of pay to the various grades of officers and men, and the second provided that when the National Guard is called forth in aid of the civil authorities or assembled in obedience to such calls, its members" . . . shall be paid by the county where such service is rendered." Then there was provision for the raising of this money by the county by certificates of indebtedness which were to bear interest at the rate of 6% per annum and made payable on the first day of January next following two months from their issue. Provision