

MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



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DEPARTMENT OF THE ATTORNEY GENERAL
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July 16, 1982

Michael Provencher
Fiscal Director
Administrative Office of the Courts
P.O. Box 4820 DTS
Portland, Maine 04112

Dear Michael:

Please excuse this late answer to your January 5, 1982 memorandum to Senior Assistant Attorney General Stephen L. Diamond. The demands of the legislative session and Steve's departure from this office to work with the United States Attorney for Maine have delayed our response.

Your memorandum asks for the proper distribution of three separate categories of fines or penalties which may be imposed by Maine District Courts:

- 1) Penalties for failure to file sales taxes (36 M.R.S.A. § 1951);
- 2) Fines for failure to file fuel tax reports (36 M.R.S.A. § 3039); and
- 3) Fines levied under the Maine Highway Transportation Reform Act (29 M.R.S.A. § 2701, et seq.).

Briefly, our conclusions are:

- 1) Penalties for violation of the Sales Tax Law should be paid to the State Tax Assessor;
- 2) Fines for violations of the Use Fuel Tax Law are collected by the State Tax Assessor and dedicated to the General Highway Fund;
- 3) Fines under the Maine Highway Transportation Reform Act when collected by the State Police or Department of Transportation are dedicated to the new Highway Safety Fund.

In general, 4 M.R.S.A. § 163, sub-§ 1 requires that all fines^{1/} collected by any Maine District Court be remitted to the Treasurer of the State, who credits them to the General Fund. The Treasurer of the State then distributes to the appropriate fund, state agency or political subdivision fines that the Legislature has seen fit to dedicate (4 M.R.S.A. § 163, sub-§ 2). After any necessary contributions to the District Court Building Fund, the balance remains with the State's General Fund (4 M.R.S.A. § 163, sub-§ 4).

I. Penalties for Failure to File Sales Tax

The obligation of a retailer to file a sales tax report with the State Tax Assessor is found at 36 M.R.S.A. c. 219. Civil penalties collected by the Maine District Court for failure to file such a report are specifically payable to the State Tax Assessor in 36 M.R.S.A. § 1953 and then forwarded to the General Fund. This § 1953 distribution to the State Tax Assessor is a restatement of the more general policy established in 36 M.R.S.A. § 187, sub-§ 5 which states that all penalties recovered for failure to file a return required under Title 36 (except Part 2, property taxes) "shall be recoverable by the State Tax Assessor in the same manner as if it were a tax. . . ." Thus, penalties collected by the District Court for failure to file sales tax reports should be paid over by the Court to the State Tax Assessor.

II. Fines for Failure to File Fuel Tax Reports

Title 36, c. 455, Use Fuel Tax, establishes a \$.09 tax per gallon of fuel used by non-resident operators of commercial motor vehicles in Maine. This tax is collected by the State Tax Assessor and then credited to the General Highway Fund. However, unlike 36 M.R.S.A. § 1953 of the sales tax chapter discussed above, the Use Fuel Tax chapter is not explicit as to whether the criminal fines for violations of it (36 M.R.S.A. §§ 3038, 3039) should be collected by the State Tax Assessor and dedicated to the Highway Fund. However, there are two indicators that this dedication was indeed the Legislature's intent.

^{1/} Although § 163 mentions any "fines, bail, forfeitures and fees," and not penalties, we see no reason to suppose that the Legislature intended the District Court to act differently when collecting penalties.

First, as discussed above, 36 M.R.S.A. § 187 establishes that for all of Title 36, any penalty for failure to file a tax return - including one must assume the Use Fuel Tax reports required under 36 M.R.S.A. § 3028 - is "recoverable by the State Tax Assessor."

Secondly, the specific purpose of this tax is to produce funds only for maintenance of the highway system (36 M.R.S.A. § 3023). To adopt an interpretation of this chapter that would now result in diverting penalties from the Highway Fund to the General Fund would seemingly defeat the Legislature's purposes. Finks v. Maine State Highway Commission, 328 A.2d 791, 795 (Me. 1974) ("Every statute must be construed in connection with the whole system of which it forms part and all legislation on the same subject matter must be viewed in its overall entirety to reach a harmonious result which we presume the Legislature intended.") In strong support of this interpretation of legislative intent is the fact that in the recent amendment to the Use Fuel Tax chapter that converted violations from civil penalties to Class E crimes (P.L. 1982, c. 689, §§ 6-7), the Statement of Fact of the Legislative Document that proposed this change specifically stated: "Violation of this proposed law will be a Class E crime and fines imposed will accrue to the Highway Fund." (L.D. 2125, page 9, 110th Legislature, Second Regular Session).

III. Fines Levied under the Maine Highway Transportation Reform Act

The determination of legislative intent as to the disposition of fines levied under the newly enacted Maine Highway Transportation Reform Act (29 M.R.S.A. c. 25) presents a problem similar to that addressed in our discussion of the Use Fuel Tax. In eliminating economic regulation of intra-state trucking, the Legislature established a Transportation Safety Fund, to receive revenues from a continuation of fees that were previously paid by motor carriers to the PUC (P.L. 1981, c. 469, enacting 25 M.R.S.A. § 2701, et seq.). This fund is used to finance the safety and insurance regulatory responsibilities newly imposed on the Department of Public Safety and the new regulatory responsibilities of the Department of Transportation. Under 29 M.R.S.A. § 2713, sub-§ 3, each fiscal year any funds not expended for these purposes may be allocated for the same purpose as moneys in the Highway Fund.

Prior to the creation of the Transportation Safety Fund, the PUC's intrastate trucking responsibilities were financed in part by fines collected for violation of the trucking laws it enforced (35 M.R.S.A. § 1563, sub-§ 8). This dedication of fines was omitted in the course of deregulating the Maine trucking industry. However, both the PUC, which authored the original deregulation legislation, and DOT apparently consider this an oversight in quite complex legislation.

Considering the general regulatory structure of which these fines are a part, and recalling the importance in Finks v. Maine State Highway Commission, supra at 795, of construing "the whole system of which [the legislation] forms part. . .", it seems most reasonable to continue to dedicate fines collected under 29 M.R.S.A. c. 25 by the Department of Public Safety or the Department of Transportation to the newly created Transportation Safety Fund.

There are two indicators that the Legislature did not intend to disrupt the financing system it had previously organized for enforcing trucking regulations. First, P.L. 1981, chapter 469, § 63 transfers all funds (including fines) from the PUC Transportation Division Fund to the Transportation Safety Fund, thereby continuing in form the method of financing trucking regulation. Secondly, legislative debate certainly did not envision any changes in the nature of the new Transportation Safety Fund:

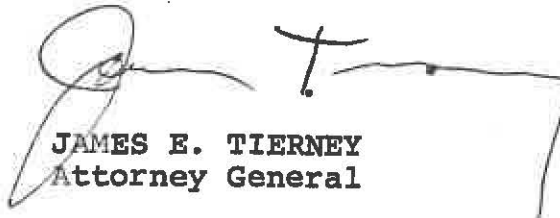
Mr. DAVIES: Mr. Speaker and Members of the House: The transportation safety fund is a fund into which monies received from registration licensing fees from trucks that are going to be in the business will be paying into. They are currently paying it into a regulatory fund in the Public Utilities Commission. They will be paying the same amount of money, there will be no increases in what they are going to be paying. It is just going to be in a new fund in the hands of the Department of Public Safety rather than in the Public Utilities Commission.

1981 Maine Legislative Record
at 1444 (June 2, 1981).

We therefore conclude that the Legislature's intent in enacting the Maine Highway Transportation Reform Act of 1981, was to dedicate all fines collected for its violation to the Transportation Safety Fund.

I trust the above answers your questions as to proper dedication of certain fines. Please do not hesitate to call me if you have any questions.

Sincerely,



JAMES E. TIERNEY
Attorney General

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