

## Opinion No. 24-3783

September 4, 1924

**BY:** JOHN W. ARMSTRONG, Assistant Attorney General

**TO:** Requested by: Lt. Col. J. W. Skipworth, Adjutant General, Santa Fe, New Mexico.

**Fines Collected in Summary Court are Paid Into Military Fund of the Organization of Which Delinquents are Members, Under Section 3884 Code of 1915.**

### OPINION

{\*168} Your query:

1. "It is desired that a definite opinion as to the disposition of funds collected in Summary Court, be submitted to this department.
2. Circular Letter No. 115, dated December 28, 1922 states that fines collected be submitted to the Treasury of the United States, where a State law does not provide for the disposition of such fines."

Under the regulations heretofore made and promulgated by the War Department, there seems to be but little question but what **forfeitures**, withheld from Federal pay, are not recoverable by the state. It is different, however, with respect to **fines**. The ruling of Federal authorities, in effect, is that, there being dual control by the State and Federal Government of the National Guard, state laws relating to the National Guard, so long as they are not in conflict with Federal laws on the subject, are applicable and enforceable. There is no Federal law relating to the disposition of National Guard Court-Martial **fine**, but the National Guard Court-Martial **forfeitures** withheld from Federal pay may not lawfully be paid the state, but must remain in the Federal Treasury. But this is in no wise applicable to **fines** which are not paid from Federal funds. It would seem that **fines** are paid into the military fund maintained by the various National Guard organizations. Section 3884 Code 1915 reads as follows:

The compensation and necessary expenses of the officer holding a delinquency court for enlisted men, and of the clerk and marshal thereof, and the actual expenses of the court for the time engaged in the trial of enlisted delinquents, and the necessary business connected therewith, shall be paid by the organizations of which the delinquents are members, and to whose military fund fines collected from such delinquents are paid, from the military fund of such organization, in the same manner as other accounts are paid from such fund.

We think the state law sufficiently provides for the disposition of such **fines** so as to satisfy any question suggested by the War Department.