

## Opinion No. 39-3306

October 17, 1939

**BY:** FILO M. SEDILLO, Attorney General

**TO:** Mr. C. R. Sebastian, State Comptroller, Santa Fe, New Mexico.

{\*115} In your letter of October 14 you inquire whether fines collected by municipalities for violation of state laws pertaining to motor vehicles should be remitted to the State Treasurer for the State Current School Fund.

Of course, all fines collected under **general state** laws constitute a part of the Current School Fund of the state. Section 4, Article XII, New Mexico Constitution.

However, I am unable to follow you when you say that the fines for violating state motor vehicle laws are being collected by municipalities.

Fines for violations of state laws are not collected by municipalities, but rather are collected by and through the state district courts and justice of the peace courts. Consequently, it strikes me that any discrepancy between the fines reported by the State Police and the fines remitted to the school fund might require a checking up on the courts rather than the municipalities, unless I am overlooking some important facts which are not disclosed by your letter.

Municipalities, as such, may prosecute only for violations of municipal ordinances, and not for the violations of state laws, although, in most cases if not all cases heretofore, the same person is both the justice of the peace of the state and the police magistrate for the municipality, and whether in a particular prosecution the justice of the peace is acting as a state officer or as a municipal officer depends on the nature and style of the charge made against the accused.

Often times the same traffic offense, if committed within a municipality, subjects the offender to both a state and municipal prosecution, and it may be that the State Police are reporting fines collected for the violation of municipal ordinances in addition to fines collected for violations of state laws.

For example, I may drive recklessly through the City of Santa Fe and a state policeman may arrest me and take or cite me before Judge Gutierrez, and instead of charging me with violation of a state law, I am charged with the violation of a city ordinance and I pay a \$ 100.00 fine. The state policeman may report the fine to his headquarters but nevertheless I was not tried for violating a **general state law**, and consequently the fine paid is not a part of the State Current School Fund.

It again strikes me that the check would seem to be on the courts rather than on the municipalities in order to determine whether the court has remitted the fine to the proper

place or whether the court has remitted at all; and further, the reports made by the State Police should be carefully scrutinized and looked into to determine whether the State Police are reporting mixed fines for violations of both state laws and municipal ordinances, and the two should be segregated.

FRED J. FEDERICI,

Asst. Atty. Gen.