

Disposition of Court Costs, Litigation Tax Revenues, and Fines

Court Costs

Court costs should be used by the city to offset the costs of providing the court. *Tennessee Code Annotated*, § 16-18-304, requires that, beginning March 1, 2005, \$1.00 of court costs assessed in each case be sent to the State Treasurer for deposit to the credit of the Administrative Office of the Courts. This office will use this money to provide training to city judges and city court clerks.

Litigation Tax Revenues

Local Litigation Tax

A municipality may levy a local litigation tax equal to the state litigation tax of \$13.75. (See T.C.A. § 67-4-601 and 16-18-305). Revenues from this tax, if the city has one, should accrue to the general fund.

State Litigation Tax

Revenues from the state litigation tax should be paid into the state treasury. These revenues are used, in the following percentages, for the Tennessee Corrections Institute (.08%), driver education (11.12%), the state general fund (43.71%), benefits for county judges (12.06%), benefits for county officials (23.74%), the state court clerks' conference (1.64%), and the remainder for the general fund and victim assistance. T.C.A. § 67-4-606.

Fines for Ordinance Violations

Revenues from fines for ordinance violations generally accrue to the city's general fund. T.C.A. § 6-21-506. The law relative to distribution of revenues from violations of ordinances that adopt the state Rules of the Road and other state traffic laws, however, is more than a little confusing.

T.C.A. § 55-10-307(a) provides:

Any incorporated municipality may by ordinance adopt, by reference, any of the appropriate provisions of §§ 55-8-101 – 55-8-180, 55-10-101 – 55-10-310, 55-50-301, 55-50-302, 55-50-304, 55-50-305, 55-50-311, and 55-50-312, and may by ordinance provide additional regulations for the operation of vehicles within the municipality, which shall not be in conflict with the provisions of such sections. All fines, penalties, and forfeitures of bonds imposed or collected under the terms of §§ 55-50-311 and 55-50-312 shall be paid over to the appropriate state agency as provided in § 55-50-604.

T.C.A. § 55-10-303(a) provides:

All fines, penalties and forfeitures of bonds imposed or collected under the provisions of

chapters 8 and 9 of this title and parts 1-5 of this chapter, except as may be imposed or collected under the provisions of § 55-10-401, shall, within fifteen (15) days following the day of the month in which such fines, penalties and forfeitures of bond were received, be paid to the commissioner of safety, with a statement accompanying the same, setting forth the action or proceeding in which such monies were collected, the name and residence of the defendant, the nature of the offense and fines, penalties, forfeitures or sentence, if any, imposed.

This language on distribution of fine revenues clearly applies to violations of the state traffic statutes enumerated. Its intent appears to be to require these revenues to accrue to the state rather than the county as they would under general provisions about fine distribution that will be mentioned below. In my opinion it is doubtful that it applies to violations of ordinances that adopt these statutes by reference. It is even more doubtful that it applies when the city does not adopt these traffic laws by reference but adopts free standing ordinances as Brentwood has done. Under the plain language of the statute the distribution to the commissioner of safety applies only to fines “imposed and collected under the provisions of chapters 8 and 9 of this title and parts 1-5 of this chapter... .” A fine levied under an ordinance is not imposed or collected under the state laws mentioned but under the ordinance itself. The phrase “except as may be imposed or collected under the provisions of § 55-10-401” bolsters the notion that this language applies only to state law violations, because municipalities cannot adopt 55-10-401, which is the DUI law, by reference. It is exclusively a state offense. This language also refers to other sections in the state traffic laws that municipalities are not authorized in § 55-10-307 to adopt by reference, specifically Title 55, Chapter 9 (except for 55-9-602 relative to child restraints, which specifically can be adopted by reference). All this leads me to believe this language was intended to refer to state law violations and not to ordinance violations.

Even if this language were interpreted as applying to ordinance violations, the city could exclude it under the authority granted under § 55-10-307(a). This subsection allows municipalities to adopt “any appropriate provisions of” the enumerated state laws. This leaves which provisions to adopt up to the discretion of the municipal governing body. Under this authority, the city would not have to adopt the provisions on fine distribution. If the city did not adopt the distribution provisions, presumably the fine revenues would accrue to the city’s general fund as provided in the Charter.

As indicated above, since the city has not adopted these state statutes by reference but has adopted free standing ordinances, the city has obviously not adopted the provisions in those laws on fine distribution. The case that revenues from fines for these ordinance violations should go to the state appears weak.

The language in the last sentence of 55-10-307(a) requiring fines collected under 55-50-311 and 312 to be sent to the state is mysterious. These sections deal with learners’ permits and licensing of minors. But 307(a) also allows cities to adopt the provisions of 55-50-301 and several other sections in this Part in addition to 55-50-311 and 312. Why are the sections on minors singled out for transmission of fines to the state when § 55-50-301, which requires the driver of a vehicle to be licensed, is not? When first enacted and codified, this provision did refer to what is now 55-50-301. After extensive revisions to these laws in 1988, however, apparently

the Tennessee Code Commission mistakenly believed that this provision should no longer refer to 55-50-301 and therefore removed it from this section. The change effected by the Code Commission did not appear in the 1989 codification act and was therefore not approved in that act by the General Assembly. When the General Assembly approves the codification act, this ratifies the codification proposed and cures most mechanical defects and mistakes in the acts and provisions codified. If this change had been included in the codification act, we could say with some certainty that the General Assembly had approved the change and 55-50-301 is not included in the list of statutes for which the fine must be sent to the state. But since this change was made by the Code Commission, which is not supposed to make changes that alter the meaning of a statute, we are left to wonder what its status is. It is somewhat telling, however, that this statute has been codified in its present form for sixteen years and no attempt has been made to change it back to its apparently original intent.

Since 55-10-307(a) specifically requires that all fines levied under 55-50-311 and 312 relative to learners' permits and minors driving (and possibly 301 requiring drivers to be licensed) must be paid to the state, does this mean that fines for an ordinance adopting these provisions by reference must be sent to the state? That is seemingly the legislative intent as expressed in the caption of Chapter No. 464, *Tennessee Public Acts of 1977*, the original act from which this language is derived. The caption of this act says that its purpose is to allow municipalities to adopt these driver licensing provisions by reference and to provide for disposition of the fines. Again, however, the body of the act refers unambiguously to the distribution of fines for the state law violation and does not refer to ordinance violations. This could be caused by poor drafting and a failure to realize that the state law and an ordinance adopting the state law by reference are two different things (different penalties, different standards of proof, different courts except in some cities). Or it could be that the Legislature simply wanted to clarify that, even though it is giving authority to municipalities to adopt this statute by reference, the revenue from fines for the state violation would continue to go to the state (rather than the county or municipality). I think the latter is more likely.

It should be noted that § 55-9-602, the state statute on child passenger restraints, specifically allows municipalities to adopt "any of the provisions of this section" by reference. This statute provides that fine revenues from violations of the state statute accrue to a child safety fund to buy child safety restraints. The same arguments noted above, however, also apply to an ordinance adopting this section, or part of it, by reference.

The practical result of all this confusion is that the city has good arguments that fines for violations of its traffic ordinances should accrue to the city's general fund as provided in its Charter. The city's case might be a little weaker with regard to the driver licensing offenses because of the apparent legislative intent expressed in the 1977 act mentioned above. If the state is demanding some or all these revenues, the city of course can accede and not rock the boat. Or it could attempt to make a stand on these arguments and perhaps get some clarification of the law.

Fines for State Law Violations

T.C.A. § 40-24-106 provides:

(a) Except as otherwise provided by law, fines, amercements, forfeitures and recoveries in criminal cases constitute a part of the revenue of the state, and shall be paid into the state treasury in the following cases:

(1) All fines and forfeitures which may be recovered in any case in which the defendant is indicted for a felony, whether convicted of a felony or an offense less than a felony; and

(2) All fines and forfeitures, imposed for a violation of any law regulating the business of banking.

(b) Except as otherwise provided by law, fines and forfeitures in all other state cases go to the county in which the indictment was found.

T.C.A. §§ 5-8-104 and 105 supplement this by requiring that fines below the grade of petit larceny and fines levied by a general sessions court accrue to the county. So these statutes provide generally that fines resulting from a crime in which the defendant was indicted for a felony accrue to the state and other fines for state violations accrue to the county. There are several specific statutory exceptions:

State Traffic Violations

As mentioned *ad nauseum* above, fines for state traffic law violations, which generally are Class C misdemeanors, accrue to the state rather than the county. T.C.A. 55-10-303(a) and 307(a).

Additional Traffic Fines

T.C.A. § 68-55-301, *et seq.*, levies additional fines for state speeding, reckless driving, driving with an invalid license, and DUI violations. Revenues from these additional fines accrue to the state traumatic brain injury fund. A 1994 act increased the fine for DUI and provided that revenues from that increase may be used by counties for alcohol and drug treatment. T.C.A. § 55-10-451 and 452.

DUI

Fines for violating the DUI law (55-10-401) accrue to the jurisdiction initiating the arrest. T.C.A. § 55-10-303(b), except as noted above for the additional fine. A portion of this, up to the total amount, must be used to reimburse the sheriff or city jail for incarcerating the defendant. T.C.A. § 55-10-401(a)(2).

Truancy Laws

Fines for violating truancy laws accrue to the school fund of the local school system in which the child resides. T.C.A. § 49-6-3011.

Drug Fines

Fines and forfeitures under the Drug Control Law accrue, with certain exceptions noted

below, to the jurisdiction that initiated the arrest and must be accounted for in a special revenue fund. Revenues in this fund may be used only in the local drug enforcement, education, and treatment programs and for nonrecurring general law enforcement expenditures. T.C.A. § 39-17-420 and 53-11-415.

50% of the mandatory minimum fines and fine amounts above the minimum collected for certain drug violations accrue to the special revenue fund and the rest to the general fund of the jurisdiction that initiated the arrest. When a drug task force initiates the arrest, the amount above the minimum mandatory fine accrues to the general funds of the entities comprising the task force. T.C.A. § 39-17-428(c).

Littering

Mandatory fines for criminal littering accrue to a county fund to be used for litter enforcement awards. T.C.A. 39-14-502.

Wildlife Laws

Ten percent (10%) of fines for violations of wildlife laws is retained by the county clerk or clerk of the general sessions court and the remainder is distributed one-half to the state wildlife resources fund and one-half to the county general fund.