

ment and your Department may entertain a second petition for resettlement.

To this question the answer must clearly be in the negative.

If your Department with the approval of the Department of the Auditor General has resettled a tax account you have no further jurisdiction over it unless and until the Board of Finance and Revenue has given your Department authority to make a further resettlement as provided in Section 1105 of The Fiscal Code, which permits your Department within one year after the date of settlement or of resettlement to petition the Board of Finance and Revenue for authority to make a resettlement upon the ground that on the basis of information in the possession of your Department the settlement or resettlement was erroneously or illegally made.

To state the matter differently if your Department is convinced that it has made an erroneous resettlement it may ask the Board of Finance and Revenue to grant permission to correct the error by making a further resettlement. This, however, is the only case in which your Department can make a second resettlement.

The taxpayer's remedy if he is unable to convince your Department that it has erred in the resettlement consists exclusively in the right within thirty days after receiving notice of the resettlement to file a petition for review as provided in Section 1103. If the Board of Finance and Revenue concurs in his view that the resettlement was erroneous it may resettle the tax but it does not have jurisdiction to return the file to your Department and either authorize or direct you to make a further resettlement.

Very truly yours,

DEPARTMENT OF JUSTICE,

WM. A. SCHNADER,

*Special Deputy Attorney General.*

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*Department of Revenue—Functions—Collection of revenue—Fines and penalties imposed—Magistrates in Philadelphia—Constitution, art. v, sec. 13—Courts of record—Payment into state or county treasury—Act of March 31, 1860—Collection by State administrative agencies.*

1. Under article v, section 13, of the Constitution of Pennsylvania, fees, fines and penalties collected by magistrates in Philadelphia, when the collection of such fines and penalties is authorized, must be paid into the county treasury and not through the Department of Revenue into the State Treasury.
2. Fees and fines collected by courts of record, or by courts not of record outside of Philadelphia, unless specifically directed to be paid into the State

Treasury, are payable into the respective county treasuries, in accordance with section 78 of the Act of March 31, 1860, P. L. 427.

3. All fines and penalties collected by administrative agencies of the state government without specific legislative direction as to their disposition are to be collected by the Department of Revenue and paid into the State Treasury.

4. All penalties imposed by law and collected by civil suit either by the Department of Justice or any other administrative agency of the state government are payable into the State Treasury whether or not the act imposing the penalties specifically so provides.

Department of Justice,

Harrisburg, Pa., June 6, 1930.

Honorable Leon D. Metzger, Deputy Secretary of Revenue, Harrisburg, Pennsylvania.

Sir: We have your request to be advised with respect to the circumstances under which fines and penalties imposed by the courts, including courts not of record, are collectible and payable by your Department into the State Treasury.

Your inquiry arises because the controller of the City of Philadelphia has challenged your right to collect from Philadelphia magistrates, fines and penalties imposed by them. You desire advice respecting this particular situation and also regarding the collection of fines and penalties in general.

A constitutional provision and an old statute have a very definite bearing upon the question in hand.

Article V, Section 13 of the Constitution provides that "All fees, fines and penalties in said courts shall be paid into the county treasury." The section of the Constitution immediately preceding this quotation relates to the organization and powers of the Magistrates' Courts in Philadelphia; and the Supreme Court, in *Commonwealth vs. McGuirk*, 78 Pa. 298, construed Article V, Section 13, as applying only to fees, fines and penalties collected in the Philadelphia Magistrates' Courts. A similar decision had been rendered by Judge Thayer in *Commonwealth ex rel. Levis vs. Randall*, 2 W. N. C. 210.

Two conclusions necessarily follow. Fees, fines and penalties collected by magistrates in Philadelphia must be paid into the county treasury no matter what provision the Legislature may have attempted to make to the contrary in the statute imposing the fines or penalties, or authorizing the collection of fees. The Legislature cannot override a constitutional mandate. This is the first conclusion. The second is equally clear, namely, that the constitutional provision does not have any bearing whatsoever upon the disposition of fees, fines and penalties collected by aldermen or justices of the peace outside of Philadelphia, or collected by courts of record, either in Philadelphia or elsewhere.

With respect to all fees, fines and penalties collected by officers other than magistrates in Philadelphia, the Legislature may validly provide what disposition thereof shall be made.

The statutory provision to which we referred is Section 78 of the Act of March 21, 1860, P. L. 427, which is still in force and provides that:

"All fines imposed upon any party, by any court of criminal jurisdiction, shall be decreed to be paid to the Commonwealth; but the same shall be collected and received, for the use of the respective counties in which such fines shall have been imposed as aforesaid, as is now directed by law."

This provision was construed by the Supreme Court in *Jefferson County vs. Reitz*, 56 Pa. 44, in which the court took the view that the Act of 1860 "would doubtless be the rule in regard to any new penalties by fine not otherwise distributed by law."

Accordingly, under this act as construed by the Supreme Court, it is clear that after the Legislature has imposed fines collectible by courts of criminal jurisdiction, such fines are payable into the respective county treasuries, unless the Legislature has specifically otherwise provided by general act subsequent to 1860 or in the acts providing for the imposition of the penalties. It is also clear that the Act of 1860 does not cover the case of penalties collectible through the civil as distinguished from the criminal courts.

We, therefore, advise you that in the collection of fines and penalties, your Department must be guided by the following principles:

1. In Philadelphia, if fines or penalties are collected by magistrates, your Department does not have either the power or the duty to demand that they be turned over to you for payment into the State Treasury. Such fines and penalties are clearly payable to the County of Philadelphia. However, we desire to point out, parenthetically, that magistrates may collect fines and penalties only if and when the Legislature has expressly given them jurisdiction to do so. Otherwise, they can merely hold the defendants for trial in the quarter sessions or other criminal courts of record.

2. On the other hand, fines and penalties collected by the courts of record in Philadelphia are payable into the State Treasury through your Department, if there is legislation distinctly providing that the fines shall be paid into the State Treasury.

3. Outside of Philadelphia, your Department has authority to collect for payment into the State Treasury any fines or penalties, whether imposed by courts of record or courts not of record, in all cases in which the Legislature has provided that such fines and penalties shall be paid into the State Treasury. However, in the absence of specific direction to this effect, the fines and penalties are payable into the respective

county treasuries, if they were collected by the criminal as distinguished from the civil courts.

4. In all cases in which fines and penalties are collected by administrative agencies of the State Government without any specific direction by the Legislature as to the disposition to be made of the moneys collected, it is the duty of your Department to collect the amounts of the fines and penalties and pay them into the State Treasury.

5. Whenever penalties are imposed by law and the collection thereof is committed to either the Department of Justice or any other administrative agency of the State Government and such penalties are collected by civil suit, the amounts recovered are payable into the State Treasury whether or not the act imposing the penalties specifically so provides. There is neither constitutional nor statutory provision to the contrary and the rule which prevails in the absence of specific direction to the contrary is that moneys collected by the State Departments, with or without the aid of the civil courts, is payable into the State Treasury.

Very truly yours,

DEPARTMENT OF JUSTICE,

WM. A. SCHNADER,

*Special Deputy Attorney General.*

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*Insane persons—Mental Health Act of 1923—State mental hospitals—Expenses of maintenance—Collection from county—Commitment awaiting trial or during sentence—Termination of county's liability upon expiration of sentence.*

1. Under the provisions of the Mental Health Act of July 11, 1923, P. L. 998, it is the duty of the Department of Revenue to collect from the counties the full cost of maintenance of patients committed to state mental hospitals while in custody under a charge of conviction of crime or while held as material witnesses to crime.

the full cost of maintenance of persons committed while out on bail awaiting

2. It is the duty of the Department of Revenue to collect in like manner trial for crime, as long as they remain in the institutions.

3. The liability of the county for the full cost of maintenance of a person undergoing sentence for crime ends when the term of sentence expires, and thereafter it is the duty of the Department of Revenue to collect the cost of such maintenance as in the case of patients committed while free from any charge of crime.