

OFFICIAL OPINION NO. 43

December 29, 1971

Mr. Thomas H. Taylor, Budget Director
State Budget Agency
212 State House
Indianapolis, Indiana 46204

Dear Mr. Taylor:

This is in response to your request for my Official Opinion concerning the following two questions:

"1. Shall the Commissioner of the Bureau of Motor Vehicles pay to the General Fund or to the Motor Vehicles Highway Fund that money which he has received from clerks that has been assessed against defendants in criminal traffic convictions?

"2. If the money is to be paid to the General Fund, should the monies heretofore deposited into the Motor Vehicles Highway Fund be transferred into the General Fund of the State of Indiana?"

ANALYSIS

The Acts of 1971, Public Law No. 34, amends Acts 1965, Ch. 350, Sec. 18, as found in Burns' (1971 Supp.), Section 47-1052 (b) and IC 1971 4-14-1-18 (hereinafter called the 1965 Fee Act) by eliminating the twenty-five cent (25¢) certification fee which had required the certification of conviction of a traffic offense to the Commissioner of Motor Vehicles. The 1971 Amendment also increased the permanent operator's record fee from two dollars (\$2.00) to three dollars (\$3.00). This fee, since the enactment of the 1965 Fee Act, and continued under the 1971 Amendment, is to be assessed against the defendant at the time of his conviction by the court which is trying a criminal traffic charge.

The 1971 Amendment does not change the manner in which the Commissioner shall collect the permanent operator's record fee or the manner in which the Commissioner shall pay the collected monies into the General Fund. Burns' 47-1052(b), *supra*, states in part as follows:

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“* * * The permanent operator’s record fee of three dollars [\$3.00] taxed in favor of the commissioner shall be paid over to the commissioner within ten [10] days after the close of each month. When the commissioner shall have collected any such permanent operator’s record fee, he *shall forthwith pay the same into the general fund.*” (My emphasis)

There is only one fund in the State of Indiana which is properly referred to as the “General Fund.” That fund is the General Fund of the State of Indiana, created by the Acts of 1852, Ch. 43, Sec. 1, as found in Burns’ (1961 Repl.), Section 61-201 and IC 1971 4-10-3 and funded according to the provisions of that Act and also according to the provisions of the Acts of 1925, Ch. 28, Sec. 1, as found in Burns’ (1961 Repl.), Section 61-202 and IC 1971 4-10-4. The following language is found at Burns’ 61-202, *supra*.

“From and after the first day of October, 1925, in addition to the revenue which accrues to and is part of the general fund of the state, as now provided by law, the general fund of the state shall consist of:

* * *

“Thirteenth. All other monies collected in any manner by the state of Indiana through any of its boards, commissions, officers or agents pursuant to any provisions of law * * *”

The language found in the 1971 Amendment and the 1965 law is unambiguous in its mandate to the Commissioner of the Bureau of Motor Vehicles to pay any such operator’s record fee collected to the General Fund. The 1971 Act does not in any manner change the language as it was originally enacted in 1965.

In answer to your second question, it is evident from the mandatory language of the 1965 Fee Act which has been neither repealed nor amended by the 1971 Amendment, that the Commissioner of the Bureau of Motor Vehicles should pay all fees collected under this section and received by him to the General Fund of the State of Indiana. This has been the law since 1965 and all monies collected since that date

under this section and all monies collected under this section should be paid into the General Fund of the State of Indiana.

CONCLUSION

It is, therefore, my official opinion that the fees designated to be collected by the Commissioner of Motor Vehicles in the 1971 Amendment found in Burns' 47-1052(b), *supra*, for criminal traffic convictions should be paid to the General Fund of the State of Indiana. It is my further opinion that all such fees collected since the enactment of the 1965 Fee Act should have been paid to the Commissioner of the Bureau of Motor Vehicles and he, in turn, should have paid this amount to the General Fund of the State of Indiana, rather than to the Motor Vehicle Highway Fund.