

**OPINION
59-195**

September 24, 1959 (OPINION)

MUNICIPAL GOVERNMENT

RE: Ordinances - Fines and Forfeitures for Violation of Ordinances

Paid Into Municipal Treasury - Insurance Proceeds

This is in reply to your letter of September 11, 1959, in regard to the use of particular funds apparently held by the police department of your city.

You inform us that the said police department has certain funds which have accrued from penalties and fees charged for storage of vehicles impounded on the streets of Fargo. Also, the department has a draft representing insurance proceeds for a damaged or destroyed police department vehicle.

You further inform us that the Board of Commissioners desires to know if the money from such sources can be used directly by the police department to supplement the allowance it will receive for a used police automobile enabling the department to purchase a new automobile, and if not, whether the money if delivered to the City Treasurer could be appropriated directly back to the police department for the purpose of enabling the department to purchase the new automobile.

Section 40-1702 of the N.D.R.C. of 1943 provides in part:

The city treasurer shall receive all moneys belonging to the city and shall keep accurate and detailed accounts thereof in suitable books prepared for that purpose in such manner as the governing body may direct from time to time. . . ."

40-1113. FINES AND FORFEITURES FOR VIOLATION OF ORDINANCES PAID INTO MUNICIPAL TREASURY. All fines, penalties, and forfeitures collected for offenses against the ordinances of a municipality shall be paid into the treasury at such time and in such manner as may be prescribed by ordinance."

We assume that the moneys to which you have reference are either penalties prescribed by city ordinance or are fees for a municipal service. In either case, they would under the provisions of the above-quoted statutes be payable to the municipal treasurer. SEE ALSO: Chapters 40-17 and 21-04 of the N.D.R.C. of 1943. We know of no basis for the holding of such moneys by the police department of the city. It would be our opinion that the proceeds from the insurance on the police department vehicle should also be held by the municipal treasurer rather than an official of the police department.

It is further our opinion that the destruction or damage to the police department vehicle to which you have reference could give rise to an emergency situation which would justify action under section

40-4018 of the N.D.R.C. of 1943 by the city to use municipal funds not previously appropriated for such purchase in the acquisition of an additional new police department vehicle. Whether it would be such an emergency situation as would permit such action would, of course, be a fact question dependent upon all surrounding circumstances.

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