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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. 82-047

MOTOR VEHICLES:
Disposition of Bail
Bond Forfeitures

James B. Zagel, Director
Illinois Department of Law Enforcement
103 Armory Building
Springfield, Illinois 62706

Dear Mr. Zagel:

I have your letter in which you inquire with respect to the proper disposition of forfeited bail bond moneys in traffic cases involving violations of section 15-111 of The Illinois Vehicle Code (Ill. Rev. Stat. 1981, ch. 95 1/2, par. 15-111) which occur on highways outside the corporate limits of a municipality or park district. You state that, in two recent cases, bail posted for violations of section 15-111 of The Illinois Vehicle Code has been ordered forfeited to the county

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in which the violation occurred. According to your interpretation of section 16-105 of The Illinois Vehicle Code (Ill. Rev. Stat. 1981, ch. 95 1/2, par. 16-105, as amended by Public Act 82-783, effective July 13, 1982), the State, rather than the county, is entitled to receive any forfeited bail bond moneys arising out of violations of section 15-111 of The Illinois Vehicle Code. For the reasons hereinafter stated, I agree with your conclusion that section 16-105 of The Illinois Vehicle Code requires any such forfeited bail amounts to be paid over to the Department of Law Enforcement for remittance to the State Treasurer.

Section 15-111 of The Illinois Vehicle Code prescribes maximum weight limitations for vehicles and combinations of vehicles operated upon the highways of the State. Subsection 15-113(a) of The Illinois Vehicle Code (Ill. Rev. Stat. 1981, ch. 95 1/2, par. 15-113) provides:

"Violations--Penalties. (a) Whenever any vehicle is operated in violation of the provisions of Section 15-111 of this Chapter, the owner or driver of such vehicle shall be deemed guilty of such violation and either the owner or the driver of such vehicle may be prosecuted for such violation. Any person, firm or corporation convicted of any violation of Section 15-111 of this Chapter shall be fined in an amount equal to 6 cents per pound for each pound of excess weight when the excess exceeds 2,000 pounds and is 3,000 pounds or less; 8 cents per pound for each pound of excess weight when the excess exceeds 3,000 pounds and is 4,000 pounds or less; 10 cents per pound for each pound of excess weight when the excess exceeds 4,000 pounds and is 5,000 pounds or less and 12 cents

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per pound for each pound of excess weight when the excess exceeds 5,000 pounds."

Supreme Court Rule 526(b) (87 Ill. 2d R.526(b)) permits a person arrested for a violation of section 15-111 of The Illinois Vehicle Code to secure his release by posting cash bail in an amount equal to the amount of the minimum fine fixed by statute, plus any statutory penalties and costs. In an example which you have furnished, a vehicle was determined to be 3,940 pounds overweight; the driver was therefore required to post a cash bail equal to eight cents per pound of excess weight, or \$315.20, plus \$25.00 court costs, for a total of \$340.20. This cash bail was ordered forfeited to the county, apparently upon the failure of the cited driver to appear in court or otherwise satisfy the citation.

Section 16-105 of The Illinois Vehicle Code provides, in pertinent part:

"Disposition of fines and forfeitures. (a) Except as provided in Section 16-104a of this Act and except for those amounts required to be paid into The Traffic and Criminal Conviction Surcharge Fund in the State Treasury pursuant to Section 9.1 of the 'Illinois Police Training Act' and Section 5-9-1 of the 'Unified Code of Corrections', fines and penalties recovered under the provisions of Chapters 11 through 16 inclusive of this Code shall be paid and used as follows:

* * *

2. For offenses committed upon any highway outside the limits of a city, village, incorporated town or park district, to the county treasurer of the

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county where the offense was committed except if such offense was committed on a highway maintained by or under the supervision of a township, township district, or a road district to the Treasurer thereof for deposit in the road and bridge fund of such township or other district; Provided, that fines and penalties recovered under the provisions of paragraph (a) of Section 15-113 of this Code shall be paid over to the Department of Law Enforcement which shall thereupon remit the amount of the fines and penalties so received to the State Treasurer who shall deposit the amount so remitted in the special fund in the State treasury known as the Road Fund except that if the violation is prosecuted by the State's Attorney, 10% of the fine or penalty recovered shall be paid to the State's Attorney as a fee of his office and the balance shall be paid over to the Department of Law Enforcement for remittance to and deposit by the State Treasurer as hereinabove provided.

* * *

(b) Failure, refusal or neglect on the part of any judicial or other officer or employee receiving or having custody of any such fine or forfeiture either before or after a deposit with the proper official as defined in paragraph (a) of this Section, shall constitute misconduct in office and shall be grounds for removal therefrom." (Emphasis added.)

Section 16-105 of The Illinois Vehicle Code clearly requires fines and penalties recovered under subsection 15-113(a) of The Illinois Vehicle Code, which specifies fines for violations of section 15-111 of the Code, to be paid over to the State. The only question is whether a bail bond forfeiture incurred in such a case is within the meaning of the statutory phrase "fines and penalties".

The primary function in construing a statute is to give effect to the intent of the General Assembly. (People ex

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rel. Morrison v. Sielaff (1974), 58 Ill. 2d 91, 93.) The legislative intent should be sought primarily from the language used in the statute. (Certain Taxpayers v. Sheahan (1970), 45 Ill. 2d 75, 84.) The words of a statute should be given their plain, ordinary, or commonly accepted meaning, unless to do so would defeat the legislative intent. Dep't of Public Works and Buildings v. Wishnevsky (1972), 51 Ill. 2d 550, 552.

In Wilkes v. Deerfield-Bannockburn Fire Dist. (1979), 80 Ill. App. 3d 327, the court construed the meaning of the phrase "fines and penalties" found in section 4-119 of the Illinois Pension Code (Ill. Rev. Stat. 1977, ch. 108 1/2, par. 4-119). The court stated therein:

" * * *

While what may constitute a fine or penalty in the context of section 4-119 has not been considered by a reviewing court, these terms have commonly accepted meanings and have been consistently applied. A fine is generally defined as a pecuniary punishment or sum of money exacted from a person guilty of an offense. (People ex rel. Mayfield v. City of Springfield (1959), 16 Ill. 2d 609, 613, 158 N.E.2d 582, 585; Sawyer v. Barbour (1956), 142 Cal. App. 2d 827, 835, 300 P.2d 187, 191; State v. Addington (1907), 143 N.C. 683, 686, 57 S.E. 398, 399.) The word penalty, on the other hand, is considered to be broader in scope and to include fines, forfeitures and other forms of punishment. (McHugh v. Placid Oil Co. (1944), 206 La. 511, 530-31, 19 So.2d 221, 227; State ex rel. Jones v. Howe Scale Co. (1914), 182 Mo. App. 658, 663, 166 S.W. 328, 330.) * * *

* * *

(80 Ill. App. 3d 327, 329-30.)

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Construing the pertinent provisions of section 16-105 of The Illinois Vehicle Code in accordance with these commonly accepted definitions, it is clear that a bail bond forfeiture is a "penalty" within the intent of the statute. Further, this construction is consistent with the language of subsection 16-105(b) of The Illinois Vehicle Code, which, in imposing liability upon officers and employees for misconduct in connection with the handling of moneys subject to disposition under subsection 16-105(a), specifically refers to the officer or employee having custody of "any such fine or forfeiture". Thus, forfeited moneys are clearly included among penalties subject to disposition in accordance with the terms of section 16-105 of The Illinois Vehicle Code.

This conclusion is further supported by reference to City of Decatur v. Curry (1976), 65 Ill. 2d 350. In that case, the supreme court, construing subsection 16-105(a)1 of The Illinois Vehicle Code, affirmed the circuit court's holding that a municipality is entitled to all moneys arising out of convictions, pleas of guilty or forfeitures relating to offenses committed by violators upon the streets and highways within municipal limits, as long as the violators were arrested and charged by the municipal police and the municipal police appeared in court when required. (See, City of Decatur v. Curry (1976), 65 Ill. 2d 350, 354.) At the time of the

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decision of the circuit court, subsection 16-105(a)1 of The Illinois Vehicle Code provided, in pertinent part:

"(a) Fines and penalties recovered under the provisions of Chapters 11 through 16 inclusive of this Act shall be paid and used as follows:

1. For offenses committed upon a highway within the limits of a city, * * * to the treasurer of the particular city * * * if the violator was arrested by the authorities of the city, * * * provided the police officers and officials of cities * * * shall seasonably prosecute for all fines and penalties under this Act. If the violation is prosecuted by the authorities of the county, any fines or penalties recovered shall be paid to the county treasurer."

In construing a statute where the same, or substantially the same, words or phrases appear in different parts of the same statute, they will be given a consistent meaning. (People v. Lutz (1978), 73 Ill. 2d 204, 212; Baker v. Salomon (1975), 31 Ill. App. 3d 278, 281-82.) Therefore, because the phrase "fines and penalties" in subsection 16-105(a)1 has been interpreted to include bail bond forfeitures, an identical phrase appearing in subsection 16-105(a)2 must be given a consistent meaning.

For these reasons, it is my opinion that, pursuant to subsection 16-105(a)2 of The Illinois Vehicle Code, the State is entitled to any bail bond moneys forfeited in judicial proceedings involving violations of section 15-111 of The Illinois Vehicle Code, which occur on highways outside the limits of a municipality or park district. Forfeited bail bond

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moneys may be reduced by any amount required to be paid to another fund or officer under the terms of section 16-105 of The Illinois Vehicle Code, before payment to the Department of Law Enforcement for remittance to the State Treasurer.

Very truly yours,


ATTORNEY GENERAL