

Overweight truck

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OW truck

To Kim Stahl <kstahl@Oglecounty.org>; emorrow@oglecounty.org <emorrow@oglecounty.org>;

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1 attachments (46 KB)

OverweightFineDistribution.doc;

Ms. Stahl and Mr. Morrow,

Here is what I've found and what I believe to be the correct way to handle overweight fines. I'll give a little background as well.

When an overweight citation is issued, there are three things which make up the total bail. The statutory fine (625 ILCS 5/15-113(a) or 3-401(d)(2), the surcharge (730 ILCS 5/5-9-1), except on overweight on registration cited under 3-401(d)(2), and the court fees

None of the court fees and none of the surcharge are ever distributed to the municipality. (By the way, I'm told there is a bill moving through the legislature now which will replace and cap both the surcharge and court fees as they are getting a bit out of control.)

625 ILCS 5/15-113(a) sets the statutory fine amount for overweight citations. The fines doubled in 2010 and the fine amount is now split between the local unit of government and the Capital Projects Fund. The current overweight fine amount is \$150 for every 500 pounds overweight. The first \$75 of the \$150 fine is supposed to go to the locals, and the second \$75 of the \$150 fine goes to the state Capital Projects Fund established in 2010. This is the basis for the confusing and poorly-worded language found in 15-113(c).

Because the city's portion of the \$150 is only \$75, some clerks are imposing the language in Supreme Court Rule 529(a)(1) which states the city only receives 44.5% of the \$75, or \$33.38. This rule however seems to me to be in direct conflict with statute in 16-105(a)(1) of the Illinois Vehicle Code which states:

"For offenses committed upon a highway within the limits of a city, village, or incorporated town or under the jurisdiction of any park district, to the treasurer of the particular city, village, incorporated town or park district, if the violator was arrested by the authorities of the city, village, incorporated town or park district, provided the police officers and officials of cities, villages, incorporated towns and park districts shall seasonably prosecute for all fines and penalties under this Code". If the violation is prosecuted by the authorities of the county, any fines or penalties recovered shall be paid to the county treasurer."

**this does not apply to violations of 15-113 (at issue) because half of the fine goes to the Capital Projects Fund.*

So... the judiciary (Supreme Court Rule 529) says the city should only get \$33.38, but the legislature states that if a municipality is "seasonably prosecuting" the offense in circuit court, under an ordinance which has adopted the IVC, then the municipality should get the full \$75. Although I haven't done any extensive research on this, I believe a state statute trumps a Supreme Court Rule.

At the end of the day, my position is that if the City of Rochelle (or any other local unit of government) is prosecuting the case locally in the circuit court, the City of Rochelle should be getting the full \$75.00 per 500 lbs overweight per the statute.

I have also attached a document sent to me by James R. Linane of Linane Traffic Consultants. Mr. Linane is one of the instructors for officers who receive training to issue overweight citations and is also the Chief of Police for Sleepy Hollow, IL. I also received a great deal of helpful information from Bryce Baker who is another trainer and very knowledgeable about this issue. Both agree it is confusing and tell me you will find a great deal of variation from circuit to circuit and sometimes even within a circuit. Unfortunately, regardless of whether the county follows the statute or the SC Rule, it is not correct to send the full fine amount to either the state or the city.

I hope this helps. We'd like to make sure that moving forward everyone is receiving the appropriate amount of the fine money. Once we get that straightened out we'd like to look into whether fine money paid to the state incorrectly is recoverable for the city.

Brent A. Wagner

(625 ILCS 5/16-105) (from Ch. 95 1/2, par. 16-105)

Sec. 16-105. 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 and except those amounts subject to disbursement by the circuit clerk under Section 27.5 of the Clerks of Courts Act, fines and penalties recovered under the provisions of Chapters 11 through 16 inclusive of this Code shall be paid and used as follows:

1. For offenses committed upon a highway within the limits of a city, village, or incorporated town or under the jurisdiction of any park district, to the treasurer of the particular city, village, incorporated town or park district, if the violator was arrested by the authorities of the city, village, incorporated town or park district, provided the police officers and officials of cities, villages, incorporated towns and park districts shall seasonably prosecute for all fines and penalties under this Code. If the violation is prosecuted by the authorities of the county, any fines or penalties recovered shall be paid to the county treasurer. Provided further that if the violator was arrested by the State Police, fines and penalties recovered under the provisions of paragraph (a) of Section 15-113 of this Code or paragraph (e) of Section 15-316 of this Code shall be paid over to the Department of State Police 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 State Police for remittance to and deposit by the State Treasurer as hereinabove provided.

2. Except as provided in paragraph 4, for offenses committed upon any highway outside the limits of a city, village, incorporated town or park district, to the county treasurer of the 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, paragraph (d) of Section 3-401, or paragraph (e) of Section 15-316 of this Code shall be paid over to the Department of State Police 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 State Police for remittance to and deposit by the State Treasurer as hereinabove provided.

3. Notwithstanding subsections 1 and 2 of this paragraph, for violations of overweight and overload limits found in Sections 15-101 through 15-203 of this Code, which are committed upon the highways belonging to the Illinois State Toll Highway Authority, fines and penalties shall be paid over to the Illinois State Toll Highway Authority for deposit with the State Treasurer into that special fund known as the Illinois State Toll Highway Authority 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 Illinois State Toll Highway Authority for remittance to and deposit by the State Treasurer as hereinabove provided.

4. With regard to violations of overweight and overload limits found in Sections 15-101 through 15-203 of this Code committed by operators of vehicles registered as Special Hauling Vehicles, for offenses committed upon a highway within the limits of a city, village, or incorporated town or under the jurisdiction of any park district, all fines and penalties shall be paid over or retained as required in paragraph 1. However, with regard to the above offenses committed by operators of vehicles registered as Special Hauling Vehicles upon any highway outside the limits of a city, village, incorporated town or park district, fines and penalties shall be paid over or retained by the entity having jurisdiction over the road or highway upon which the offense occurred, 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.

(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.
(Source: P.A. 88-403; 88-476; 88-535; 89-117, eff. 7-7-95.)