

Stephanie J. Cole
Deputy Administrative Director
Alaska Court System

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Bail bond forfeitures for
municipal offenses

James L. Baldwin
Assistant Attorney General

You requested our advice concerning the proper recipient of the proceeds of forfeited bail bonds given by defendants accused of violating a municipal ordinance. Your dilemma is whether to remit the proceeds to the state general fund or to the prosecuting municipality.

We presume you are questioning the validity of Administrative Rule 5(b), which provides:

The proceeds of all . . . forfeitures . . .
(except trust funds) collected by or deposited
with the courts shall be deposited in the
appropriate bank account for transfer to the
general fund of the state in accordance with
procedures established by the executive director.

You suggest that bail money could be considered either state or municipal property. One theory you advance is that the forfeited bail is meant to compensate the prosecuting municipality for the cost of prosecution. Alternatively, you suggest that forfeited bail may be considered a sanction for failure to abide by a court order. The Alaska Supreme Court appears to have adopted the latter purpose when it made the following observation:

The purpose of bail in the administration of
criminal justice is to insure the defendant's
appearance at trial.

Reeves v. State, 411 P.2d 212, 215 (Alaska 1966). In effect, the bail bond is a contract between the bondsman and the state. The principal (the accused) pays a premium to the bondsman in exchange for the promise to pay the bail to the state. In exchange for the bail bond, the court orders the release of the principal. When the conditions of release are violated, the principal amount of the bond is payable to the court.

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We can find no basis for treating forfeited bail as anything other than state receipts. Under the Alaska Constitution, we have a unified court system. Alaska Const. art. IV, sec. 1. There appears to be no legal basis for allocating collection functions within the Alaska Court System based on the charging jurisdiction. For every matter brought before it, the court is a state court even though it is adjudicating offenses imposed by municipal ordinance. Any attempt to segregate forfeited bail for municipal offenses would be artificial and without sufficient statutory basis. To the contrary, the Fiscal Procedures Act expressly provides:

Unless specifically exempted by statute, a state agency authorized to collect or receive fees, licenses, taxes, or other money belonging to the state shall account for and remit the receipts . . . to the Department of Revenue at least once each month.

AS 37.10.050(a). Until the legislature directs otherwise, the Alaska Court System would be acting properly if forfeited bail imposed on persons accused of municipal offenses is remitted to the state general fund.

We hope this memorandum satisfactorily answers your question.

JLB: jr