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State of Louisiana
DEPARTMENT OF JUSTICE
CIVIL DIVISION
P.O. BOX 94005
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June 27, 2023
OPINION 23-0068

Douglas Dominick
Town Attorney
Town of Oil City
203 W. Alabama
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46-A

FEES & COSTS

La. R.S. 13:1898	La. C.Cr.P. art. 25
La. R.S. 15:81	La. C.Cr.P. art. 208
La. R.S. 33:441	La. C.Cr.P. art. 209
La. R.S. 32:57	La. C.Cr.P. art. 314
La. C.Cr.P. art. 21	La. C.Cr.P. art. 333
La. C.Cr.P. art. 22	La. C.Cr.P. art. 335

The fine assessed for failure to appear should be deposited into the Town's general fund. Before a court can determine that the defendant has committed a direct contempt, the defendant must be given an opportunity to be heard so that he can offer the court a defense or explain other mitigating circumstances.

Dear Mr. Dominick:

Our office received your request for an opinion on behalf of the Council for Oil City regarding the assessment of certain fines by the Mayor's Court for Oil City. Specifically, you ask: (1) Can the fine assessed for failure to appear be deposited into the general fund or should it be applied towards the fine assessed by the court for the initial offense; (2) Is a separate hearing required for the fine assessed for the defendant's failure to appear?

The Town of Oil City (the "Town") is a Lawrason Act Municipality. The Lawrason Act provides that "there shall be a mayor's court in the municipality, with jurisdiction over all violations of municipal ordinances."¹ The magistrate of a Mayor's court may issue a summons instead of an arrest warrant when he or she has reasonable grounds to believe that the person against whom a complaint is made will appear.² "A summons is an order in writing, issued and signed by a magistrate or a peace officer in the name of the state, stating the offense charged and the name of the alleged offender, and commanding him to appear before the court designated in the summons at the time and place stated in the summons."³ If the defendant fails to appear, "the court shall on its own motion, or on motion of the prosecuting attorney, immediately issue a warrant for the arrest of the defendant."⁴ This warrant is referred to as a "bench warrant." The bench warrant will stay in effect until it is recalled either by the defendant voluntarily showing up to court or the arrest of the defendant pursuant to the bench warrant. If arrested, the mayor's court can either set bail for the defendant's release in an amount

¹ La. R.S. 33:441.
² La. C.Cr.P. art. 209.
³ La. C.Cr.P. art. 208.
⁴ La. C.Cr.P. art. 333.

not to exceed \$100.00 or release the defendant on his or her own recognizance.⁵ If the court sets bail and the defendant fails to make an appearance within one hundred eighty days of the arrest warrant, the prosecutor may institute bond forfeiture proceedings.⁶

In addition to the issuance of a bench warrant, a mayor's court may punish a defendant's failure to appear through contempt of court proceedings. Contumacious failure, after notice to appear, is a direct contempt and no trial is required.⁷ However, La. C.Cr.P. art. 22 requires that before a court can determine the defendant has committed a direct contempt, the defendant must be given an opportunity to be heard so that he can offer the court a defense or explain other mitigating circumstances. This can take place in a separate hearing solely for the contempt charge or it may take place at the hearing on the initial offense. If found guilty, the court can then render an order laying out the facts constituting the contempt, adjudging the person guilty thereof, and specifying the punishment as well as the fines or costs to be imposed.⁸

If the defendant is found guilty of contemptuous failure to appear in connection with a criminal proceeding, La. C.Cr.P. art. 25 allows for a fine of not more than 500.00 dollars or imprisonment not to exceed six months, or both. However, subject to some exceptions, La. R.S. 32:57(D) limits the amount of the fine for failure to appear in cases involving a violation of the Louisiana Highway Regulatory Act.⁹ The assessment of fines and costs is also subject to a determination of substantial financial hardship to the defendant.¹⁰ Finally, the fine for the failure to appear is separate from the fine resulting from the initial violation.

As for your question regarding whether the fine may be kept by the Town, La. R.S. 13:1898(A) states that the clerk of the mayor's court "shall collect all fines, forfeitures, penalties, and costs, and all funds so collected by them, excluding costs, shall be paid into the city treasury when the prosecution is on behalf of the city." However, we note

⁵ La. C.Cr.P. art. 314; La. R.S. 15:81(B). We note that the Mayor's Court of Kenner has an exception to this general rule in La. C.Cr.P. art. 15:81 (H)(2).

⁶ La. C.Cr.P. art. 335.

⁷ La. C.Cr.P. art. 21.

⁸ La. C.Cr.P. art. 21.

⁹ This limitation does not apply to certain citations set forth in La. R.S. 32:57 (E) and (F).

¹⁰ See, La. C.Cr.P. art. 875.1. "The purpose of imposing financial obligations on an offender who is convicted of a criminal offense is to hold the offender accountable for his action, to compensate victims for any actual pecuniary loss or costs incurred in connection with a criminal prosecution, to defray the cost of court operations, and to provide services to offenders and victims. These financial obligations should not create a barrier to the offender's successful rehabilitation and reentry into society. Financial obligations in excess of what an offender can reasonably pay undermine the primary purpose of the justice system which is to deter criminal behavior and encourage compliance with the law. Financial obligations that cause undue hardship on the offender should be waived, modified, or forgiven. Creating a payment plan for the offender that is based upon the ability to pay, results in financial obligations that the offender is able to comply with and often results in more money collected. Offenders who are consistent in their payments and in good faith try to fulfill their financial obligations should be rewarded for their efforts."

that absent a judgment of bond forfeiture, bail may not be deposited into the general fund.

If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JEFF LANDRY
ATTORNEY GENERAL

BY: 
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