

*South Dakota Legislative Research Council*

*Issue Memorandum 97-6*

---

## Civil Penalties: Where Does the Money Go?

### *Introduction*

Criminal courts can take away a person's freedom and life, but the civil courts are usually limited to taking away a person's money or prohibiting certain conduct. When the State of South Dakota goes to civil court and is declared the winner, where is that money deposited in the state system, and what programs does it support? When the Constitution was written, civil penalties were not a major source of income and they were deposited in only one fund. The framers mentioned the collection of civil penalties only once in the entire Constitution. Today, however, the state collects more civil penalties and deposits them in numerous different state accounts.

### *Definitions*

A civil wrong may be defined in statute, or it may be established by previous court decisions. Civil lawsuits involve personal injuries, business disputes, land deals, libel and slander, and various other commercial interests. Civil law actions must be brought by an attorney hired by the injured party (the plaintiff) against the alleged wrongdoer (the defendant). The parties in a civil case may be individuals, corporations, or the state itself. Civil law is concerned with the peaceful resolution of disputes between parties.

### *History*

The South Dakota Constitution directs "the proceeds of all fines collected from violations of state laws . . . be paid to the county treasurer"<sup>1</sup> for the purpose of providing a free education to the children of the state. General Beadle, the territorial Superintendent of School and Public Lands, brought the issue of quality education to the forefront of the discussions when he learned the Dakota Territory might sell state owned

land for low prices. He took a strong stand against the low price and was the first to consider breaking away from the territory and becoming a state to save the schools. During the Constitutional Convention he insisted the state sell lands for a minimum of \$10/acre with the proceeds going to the schools.

It was during the School and Public Lands discussions that the following committee report was submitted: "The stability of a Republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the Legislature to establish a general and uniform system of public schools."<sup>2</sup>

With that report, the first constitution directed all fines and penalties be deposited in the County School Fund to be distributed to all schools in that district. In 1899 legislation was passed to direct civil fines collected from hunting violations away from the school fund and into the County Game Fund (now called the Game, Fish and Parks Fund).

Almost 70 years later, in 1968, a third fund was created to accept money collected from civil wrongs to the state. The Department of Labor created the Employment Security Contingency Fund which was to collect all fines, penalties, and interest related to the unemployment compensation program. Money in the fund could be used by the Department of Labor for administrative functions as approved by the Governor.

In 1980, the Attorney General, on behalf of the state, was allowed to collect civil penalties in all Restraint of Trade violations and deposit the money in the Anti-Trust Special Revenue Fund. The 1985

Legislature gave the Secretary of Revenue authority to create a fund to recover civil penalties related to violations to the South Dakota Liquor Control Law.

***Attorney General's Opinion 88-04***

After all of the diversions of civil fines away from the County School Fund, it was not until January 1988 that an official opinion was written on the subject. Attorney General Roger Tellinghuisen wrote Official Opinion No. 88-04 in response to the Department of Water and Natural Resources.

**FACTS:**

The Department of Water and Natural Resources is anticipating a request to draft a bill for the 1988 Legislative Session that would create a State Cleanup fund which would be used to respond to spills and leaks of regulated substances and petroleum products. One of the sources of funding being considered are civil penalties that are collected as a result of violating environmental control statutes. Article VIII, Section 3 of the South Dakota Constitution states: “[A]ll fines collected from violations of state laws shall be paid to the county treasurer . . . to be distributed among and between all of the several public schools incorporated in such county . . .” The Department is concerned whether the Legislature may, consistent with that provision, provide that civil penalties collected for environmental harm under SDCL Titles 34A and 45 be placed in such a cleanup fund.

Based upon those facts, you have asked the following question:

Does Article VIII, Section 3 of the South Dakota Constitution mandate that civil penalties collected pursuant to SDCL Titles 34A and 45 be paid to the benefit of the public schools?

Attorney General Tellinghuisen concluded that:

When all of these various factors are considered together, it is my opinion that the framers of the Constitution referred to criminal proceedings when they used the word “fines.” General case law provides that the ordinary meaning of “fine” is a criminal sanction. . . . Accordingly, it is my opinion that the Legislature may, consistent with Article VIII, § 3, provide that those “civil penalties,” which are not criminal sanctions, can be paid into a newly created cleanup fund. My answer to your question is No.

***Opening the Door***

After receiving the Attorney General's opinion, the Department of Water and Natural Resources (DWNR, now called Environment and Natural Resources) introduced legislation in 1988 that would allow the department to deposit civil penalties in department-controlled funds. Two new environmental fee funds were established that year, the Environment and Natural Resources Fee Fund (ENRFF) and the Regulated Substance Response Fund.

Opinion No. 88-04 opened the door for other agencies to keep control of the civil penalties collected by their agencies. The DWR was not the only agency to take advantage of the recent Attorney General's Opinion. During the 1988 Legislative Session changes were made as follows: Uniform Securities Act violations were deposited into the State General Fund; banking law violations were deposited in the Banking Revolving Fund; petroleum release violations were directed to the Petroleum Release Compensation Fund administered by the Department of Commerce.

In the time since Attorney General's Opinion No. 88-04 was released, six additional statute changes have diverted civil fines from the school fund to agency budgets. (*See attached table.*)

The amount of civil penalties collected by

the state in any given year is difficult to ascertain because most departments who collect and keep the fines do not differentiate between the civil penalties and the other sources of revenue in the fund. The Department of Game, Fish and Parks separates their revenue sources and reported deposits of \$21,419 in the Game Fund for civil fines collected as a result of hunting violations in FY1996.

### ***Conclusion***

The process of tracking civil fines collected by the state is, at times, complicated and obscure. Over the years, the use of civil fines and penalties received by the state has mushroomed from one account to at least fifteen. Couple that with the fact that the accounting system does not specifically track the money, and civil fines become lost in an accounting maze.

**Civil Fines and Penalties Collected by the State  
that *are not* Deposited in the  
Permanent School Fund**

<u>SDCL</u>	<u>Civil Penalty Description</u>	<u>Deposit Fund</u>	<u>Year of Statutory Change</u>
Art. VIII §3 Paragraph 2	South Dakota Constitution: ...That the proceeds of all fines collected from violations of state laws shall be paid to the county treasurer of the county in which said fine shall have been imposed, and by him remitted to the state treasurer and apportioned by the commissioner of school and public lands back to the county from which such moneys were collected to be distributed among and between all of the several public schools incorporated in such county in proportion to the number of children in each, of school age, as may be fixed by law.	Deposited in Permanent School Fund	
1-40-30	Civil fines collected by the Department of Environment and Natural Resources (DENR) that are specifically designated for deposit in the fund.	Environment and Natural Resources Fee Fund (ENRFF)	1988
34A-3A-22	Civil penalties received for any drinking water standards violations.	Drinking Water Administrative Subfund (Subfund of the ENRFF)	1992
34A-6-102	Civil penalties received for any infectious (medical) waste violations.	Regulated Substance Response Fund	1992
34A-12-15	All money collected by the DENR as per Titles 34A and 45 for settlements based on damage to the environment or a violation of the state's environmental laws. (Title 34A includes Air Quality, Water Pollution, Solid Waste, Hazardous Waste, Recycling, Mining, Oil and Gas.)	Regulated Substance Response Fund	1988
34A-13-11	Civil penalties recovered by the Petroleum Release Compensation Fund for reasonable and necessary expenses incurred in taking a corrective action.	Petroleum Release Compensation Fund	1988
35-4-97	Civil penalties recovered for violations to the South Dakota Liquor Control Law (SDCL 34-4-93).	Secretary of Revenue	1985
36-18-32	The Commission of Engineering, Architectural and Land Surveying may impose a civil penalty if any member is convicted of a felony or violates Chapter 36.	Commission of Engineering, Architectural and Land Surveying	1990
37-1-31	The Attorney General, on behalf of the State, may collect civil penalties in all Restraint of Trade violations.	Anti Trust Special Revenue Fund	1980
37-24-26	Deceptive Trade Practices.	State General Fund	1971
38-21-57	Pesticide Violations.	Pesticide Fund	1993
41-1-5.2	Unlawful killing or taking of animals.	Department of Game, Fish and Parks Fund	1899
41-20-5	Agriculture - Any damages collected from the responsible party to obtain reimbursement for reasonable fire suppression and extinguishment.	Fire Suppression Special Revenue Fund	1992
46A-1-63	Energy Industry - Funds recovered as a result of any lawsuit or settlement involving a contract or instrument of conveyance for energy industry use where the conservancy district was party. (This excludes attorney expenses which should be	Water and Environment Fund	1989

<u>SDCL</u>	<u>Civil Penalty Description</u>	<u>Deposit Fund</u>	<u>Year of Statutory Change</u>
47-31A-204	deposited in the Anti Trust Special Revenue Fund.) Uniform Securities Act violations.	State General Fund	1988
49-34B-12	Violation of Pipeline Safety statutes.	Pipeline Safety Account	1994
51A-1-5	Penalties from bank officers, employees or directors who violate the banking laws.	Banking Revolving Fund	1988
61-3-28	Penalties collected under the unemployment compensation chapter.	Employment Security Contingency Fund	1968

---

**This issue memorandum was written by Annie Mertz, Fiscal Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.**

---

<sup>1</sup> South Dakota Codified Laws, The Allen Smith Company, Indianapolis, Indiana, 1978, Volume 1, 1978 Revision, p. 416.

<sup>2</sup> State Historical Society, South Dakota Historical Collections, Vol. XXI, Hipple Printing Company, Pierre, SD, 1942, p. 326.