

**To: David K. Byers****June 22, 2000****Re: Surcharges on Local Administrative Fees and Forfeitures****Administrative Director of the Courts****I00-015  
(R99-045)****Questions Presented**

You have asked whether municipal courts must assess and collect surcharges pursuant to Arizona Revised Statutes ("A.R.S.") §§ 12-116.01 and -116.02 on local administrative and case processing fees that a charter city imposes for parking violations.

**Summary Answers**

The entire amount a municipality assesses for a parking violation is subject to the State surcharges, regardless of the label a local jurisdiction places on the payment; therefore, a municipality must collect the State surcharge on local administrative and case processing fees imposed for parking violations.

**Background****A. The State Surcharges on Fines, Penalties, and Forfeitures.**

In 1968, the Arizona Legislature began imposing "penalty assessments," or surcharges, on specified fines, penalties, and forfeitures to generate revenue for various programs. 1968 Ariz. Sess. Laws ch. 209, § 1 (former A.R.S. § 41-1726) (10 percent penalty assessment on criminal fines, penalties, and forfeitures, to finance a peace officers' training fund). Over the years, the Legislature expanded the types of fines, penalties, and forfeitures subject to assessment, increased the amount of assessments, and diversified the matters financed by the assessments. See, e.g., 1982 Ariz. Sess. Laws ch. 330, § 3 (former A.R.S. § 41-2403) (increasing penalty assessment to 37 percent, financing the criminal enhancement fund). Assessments have also been increased by voter initiative. See A.R.S. § 16-954(C) (enacted by Proposition 200, as approved by voters in 1998 general election).

The penalty assessment generates revenue that supports various State programs. See A.R.S. §§ 16-954(C) (using penalty assessment to fund clean elections program for the public financing of certain campaigns), 41-2401(D) (allocating assessment money to the Department of Juvenile Corrections, the Peace Officers' Training Fund, the Prosecuting Attorneys' Advisory Council, the Arizona Supreme Court, the Department of Public Safety, the Department of Law, the Department of Corrections, the Arizona Criminal Justice Commission, the State General Fund and various other funds established by statute). The jurisdiction imposing the fine, penalty, or forfeiture is required to collect these State penalty assessments and transmit them to the State Treasurer for distribution to the various programs as directed by statute. A.R.S. §§ 12-116.01(G), (H), -116.02.

Currently, Arizona law requires penalty assessments totaling more than 75 percent on:

every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses and any civil penalty imposed and collected for a civil traffic violation and fine, penalty or forfeiture for a violation of the motor vehicle statutes, for any local ordinance relating to the stopping, standing or operation of a vehicle or for a violation of the game and fish statutes in title 17.

A.R.S. §§ 12-116.01(A), (B), -116.02. In a recent case, *State of Arizona v. City of Phoenix*, CV 96-21242 (Maricopa County Super. Ct. Oct. 10, 1999), the superior court determined that these penalty assessments apply to local parking violations.

**B. Administrative Fees Imposed by Charter Cities.**

In 1995, this Office concluded that charter cities may establish fees to be collected by city courts, if their charters or ordinances authorize them to do so. Ariz. Att'y Gen. Op. 195-018. Thus, a charter city may denominate as a fee a portion of the money collected for parking infractions and use the fee as directed by the city's charter. Although charter cities may establish court fees, if so authorized by their charters or ordinances, other cities and towns

generally cannot because the Legislature has not authorized them to do so. *Id.*

### Analysis

Legislative language "is the best and most reliable index of a statute's meaning." *State v. Jones*, 188 Ariz. 388, 392, 937 P.2d 310, 314 (1997). The Legislature imposed the state penalty assessment on every "fine," "penalty," or "forfeiture" imposed as a result of specified civil or criminal violations. A.R.S. §§ 12-116.01, -116.02. Although the relevant statutes do not define the terms "fine," "penalty," or "forfeiture," when terms are undefined in statute they should be given their natural and obvious meanings. *Jones*, 188 Ariz. at 392, 937 P.2d at 314.

The Arizona Supreme Court has described a fine as "a pecuniary punishment imposed by a lawful tribunal upon a person convicted of a crime or misdemeanor." *Frazier v. Terrill*, 65 Ariz. 131, 136, 175 P.2d 438, 441 (1946). A penalty has been described as "an elastic term with many different shades of meaning involving the idea of punishment, corporal or pecuniary, or civil or criminal, although its meaning is generally confined to pecuniary punishment." *Chalmers v. City of Tucson*, 171 Ariz. 162, 164, 829 P.2d 846, 848 (App. 1991) (citing *Allred v. Graves*, 134 S.E.2d 186 (1964)). Consistent with these descriptions, Webster's Dictionary defines the terms fine, penalty and forfeiture as follows:

**fine** . . . a sum . . . imposed as punishment for a crime – distinguished from forfeiture or penalty.

**forfeiture** . . . something (as property or money) lost as a forfeit [misdeed, crime, harm].

**penalty** . . . punishment for crime or offense . . . a sum of money recoverable by the state . . . for the less serious offense *no mala in se*.

Webster's Third International Dictionary 852, 891, 1668 (1993).

The use of the phrase "every fine, penalty and forfeiture" suggests that the Legislature intended the surcharge to apply broadly to the amounts owed as a result of certain violations of the law. The amount generally assessed for violating a local parking ordinance falls squarely within this concept, regardless of whether part of the amount is labeled an "administrative fee." Indeed, traffic fines often are used to defray certain administrative costs associated with the violation. See *State v. Walker*, 159 Ariz. 506, 508, 758 P.2d 668, 670 (App. 1989) (characterizing monetary consequences of traffic infractions as "remedial civil sanctions . . . to defray the enforcement costs of investigating, monitoring and prosecuting civil lawbreakers"). Thus, whether a jurisdiction labels the amount a violator must pay a "fine" or an "administrative fee" does not affect the calculation of the State surcharge.

In some contexts, courts have distinguished moneys paid as penalties from certain administrative fees. Specifically, the time payment fee the Legislature imposed on a penalty, fine, or sanction is procedural and is not a penalty for the purposes of determining whether the prohibition against ex post facto application of laws applies. *State v. Weinbrenner*, 164 Ariz. 592, 593, 795 P.2d 235, 236 (App. 1990). In reaching this conclusion, the court noted that the time-payment fee benefits defendants "who cannot afford to pay their penalties up front, by providing a mechanism through which the privilege of payment over time can be exercised." *Id.* at 594, 795 P.2d at 237. Following this reasoning, administrative fees that, like the time payment fee, are related to a specific service a particular defendant may receive are distinguishable from an administrative fee that is routinely assessed based on a violation of law. Cf. *State v. Beltran*, 170 Ariz. 406, 408, 825 P.2d 27, 29 (App. 1992) (surcharge on criminal fine subject to ex post facto prohibition).

The purpose of the surcharge statute further supports the conclusion that the entire amount owed is subject to the surcharge, regardless of the label. See *Hayes v. Continental Ins. Co.*, 178 Ariz. 264, 268, 872 P.2d 668, 672 (1994).<sup>(1)</sup> The State penalty assessments also generate revenue for specified State programs. If the label governed the calculation of the State penalty assessment, charter cities could, if authorized by their charters or ordinances, impose small fines and separate amounts for administrative expenses to drastically reduce the State penalty assessment. An undue emphasis on labels would undermine the Legislature's effort to broadly impose penalty assessments on monies collected for specified violations. It could also result in inconsistent application of the penalty assessment in different jurisdictions because some jurisdictions have the ability to impose separate administrative fees but others do not. Thus, whether a city imposes a single amount labeled a "fine" that punishes the person for a parking violation and also covers related administrative expenses or instead imposes a small fine, in addition to a separate administrative fee, does not affect the calculation of the penalty assessment.

In sum, based on the broad statutory language and the purpose of the penalty assessment statutes, municipal courts

must collect the penalty assessment on local administrative fees generally imposed for parking violations. However, they need not collect the penalty assessment for administrative fees that pay for specific services and are not assessed for every violation, such as, for example, a late payment fee or dishonored check fee.

### **Conclusion**

The State penalty assessment applies to all amounts generally collected for a parking violation, regardless of the label. Thus, municipal courts must assess and collect State penalty assessments on administrative or case processing fees that are routinely collected along with amounts designated as the fine.

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1. Under federal bankruptcy law, a debt for a "fine, penalty, or forfeiture" is non-dischargeable provided that it is "payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss . . ." 11 U.S.C. § 523(a)(7). In that context, "fine, penalty or forfeiture" has been broadly interpreted to further the purpose of the bankruptcy laws. *See, e.g., Kelly v. Robinson*, 479 U.S. 36, 54-55 (1986) (concluding fine, penalty or forfeiture includes restitution); *In re Thompson*, 16 F.3d 576 (4th Cir. 1994) (fine, penalty, or forfeiture includes prosecution costs in a criminal case); *Williams v. Motley*, 925 F.2d 741, 745 (4<sup>th</sup> Cir. 1991) (fine, penalty, or forfeiture includes a fee on uninsured motorists to defray administrative costs for serving notice).

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