

The same rule applies here. The legislature, by amending Section 248, evinces an intent that the brokers of vehicles be licensed and did not intend to impose upon brokers the unreasonable requirement that they have an established place of business which included facilities which were not necessary to the legitimate operation of a brokerage. On the other hand, Sections 11 and 249(f), along with Section 14 which defines an established place of business, reveal the general policy of the Michigan vehicle code that dealers do have established places of business.

Accordingly, it is my opinion that a broker may be licensed as a dealer if he has an established place of business which is suitable for the legitimate operation of a brokerage, there being a reasonable amount of discretion vested in you as to what constitutes such an establishment.

FRANK J. KELLEY,  
*Attorney General.*

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**FINES FOR EXCESS WEIGHT: Motor vehicles.**

A justice of the peace does not have any discretion in determining the amount of fine for violating that portion of the Motor Vehicle Code limiting the weight of certain vehicles. These fines must be applied to the local library fund and distributed in accordance with law.

No. 4629

December 19, 1967.

Mr. Albert Lee  
Auditor General  
567 Hollister Building  
Lansing, Michigan

You have posed two questions: (1) Whether a justice of the peace has discretion in imposing the amount of fines resulting from a misdemeanor conviction of violating that portion of the Motor Vehicle Code limiting the weight for certain motor vehicles; and, (2) What is the proper disposition of these fines?

Section 724(c) of Act 300, P.A. 1949, as last amended by Act 277, P.A. 1967, being M.S.A. Curr. Mat. § 9.2424, provides as follows:

“(c) Any owner of any vehicle as defined in this act, or any lessee of the vehicle of an owner-operator, who causes or allows a vehicle to be loaded and driven or moved on any highway, when the weight of that vehicle violates the provisions of section 722 is guilty of a misdemeanor and upon conviction thereof shall be assessed a fine in an amount equal to 2 cents per pound for each pound of excess load over 1,000 pounds when the excess is 2,000 pounds or less; 4 cents per pound of excess load when the excess is over 2,000 pounds but not over 3,000 pounds; 6 cents per pound for each pound of excess load when the excess is over 3,000 pounds but not over 4,000 pounds; 8 cents per pound for each pound of excess load when the excess is over 4,000 pounds but not over 5,000 pounds; 10 cents per pound for each pound of excess load when the excess is over 5,000 pounds.”

In *People v. Wolfe*, 338 Mich. 525 (1953) the Court stated at page 542:

"The validity of section 724, as amended by P.A. 1952, No. 13, is further challenged on the ground that no discretion in the imposition of the statutory fine is permitted. In other words the statute itself fixes the amount of the fine, based on the determination by the court or jury, as the case may be, as to the amount of excessive weight transported by the equipment of the defendant. It is not essential to the validity of a penal statute that the court imposing sentence be permitted to exercise discretion to some extent, or within prescribed limitations. In the event of conviction of first degree murder the offender is subject to a mandatory life sentence. The validity of such provision of the statute is commonly recognized. In *People v. Palm*, 245 Mich. 396, 403, 404, certain mandatory provisions of the code of criminal procedure of the State were sustained, the opinion in the case declaring in substance that courts have no discretionary power except as conferred by law. See, also, *State v. Stang Tank Line*, 264 Wis. 570 (59 N.W. 2d 800), in which it was held that, under a similar statute, the trial court had no discretion as to the amount of the fine. The fact that the legislature in the instant case saw fit to prescribe the penalty and to make the imposition mandatory does not render the statute under which defendant was prosecuted unconstitutional."

Under the ruling in *Wolfe*, supra, it is abundantly clear that a justice of the peace does not have any discretion in imposing the amount of fine resulting from a conviction for violating the weight limit for certain motor vehicles, but must follow the exact formula set forth in the statute. See Opinion of the Attorney General dated June 30, 1952, No. 1567 (O.A.G. 1951-52, page 479).

Turning to your second question relative to proper disposition of these fines, in the 1963 Michigan Constitution, Section 9, Article VIII, reads as follows:

"The legislature shall provide by law for the establishment and support of public libraries which shall be available to all residents of the state under regulations adopted by the governing bodies thereof. All fines assessed and collected in the several counties, townships and cities for any breach of the penal laws shall be exclusively applied to the support of such public libraries, and county law libraries as provided by law."

Supplemental authority is found in Section 4845 of Act 236, P.A. 1961, being C.L. 1948 § 600.4845; M.S.A. 1962 Rev. Vol. § 27A.4845, which reads in part as follows:

"(1) The county treasurer shall credit all fines for the violation of the penal laws to the library fund and all other penalties to the general fund; and he shall account therefor to the board of supervisors annually."

Further supplemental authority is found in Act 59, P.A. 1964, being M.S.A. 1965 Cum. Supp. § 15.1793(1), et seq.

Thus, the next question to be considered is whether a violation of Act 300, P.A. 1949, supra, is a breach of the state penal laws. A violation of that act is a misdemeanor as evidenced by the following language from Section 724(c) of Act 300, P.A. 1949, as amended, supra:

"(c) Any owner of any vehicle as defined in this act, or any lessee \* \* \* who \* \* \* violates the provisions of section 722 is guilty of a misdemeanor \* \* \*." (Emphasis supplied)

In Michigan misdemeanors are included with felonies in the definition of crimes, *People v. Goldman*, 221 Mich. 646 (1923). It is evident that a breach of the state penal law is equivalent to committing a crime even though the punishment inflicted is pecuniary if the statute violated is a general law passed by the state legislature, *Cary v. Schmeltz*, 125 S.W. 532 (Mo. 1910); *Wayne County v. Detroit*, 17 Mich. 390 (1868) and *People ex rel. Wayne County Treasurer v. Detroit City Controller*, 18 Mich. 445 (1869).

In *People v. Crucible Steel Co. of America*, 151 Mich. 618 (1908) at 619, 620, the Court said:

"We understand a penal statute to be a statute imposing a penalty for doing that which the statute prohibits or for omitting to do that which the statute requires, \* \* \*."

Thus, in view of the language from Section 9, Article VIII of the 1963 Michigan Constitution, the quoted portion of Act 236, P.A. 1961, *People v. Goldman*, supra, and *Cary v. Schmeltz*, supra, it is my opinion that the fines resulting from a misdemeanor conviction of violating that portion of the Motor Vehicle Code limiting the weight for certain motor vehicles, must be credited to the county treasurer for the support of public libraries in accordance with law.

FRANK J. KELLEY,  
Attorney General.

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**CITIES: Home Rule--Public Employment.**

Charter providing for single uniform pay plan for all classified employees of city, placing various classes of employees into various classification levels and providing equal pay for all in each level, is not *per se* violation of statute designating collective bargaining representative selected by majority of employees in unit "appropriate for such purposes."

No. 4619

January 24, 1968.

Honorable Dale E. Kildee  
State Representative  
The Capitol  
Lansing, Michigan

You have asked the following question:

Where a home rule city charter provides for a single uniform pay plan for all classified employees of the city, which charter places various