2215.

MUNICIPAL COURT OF NEWARK—CANNOT ISSUE WARRANTS TO SHERIFF, LICKING COUNTY—SHERIFF'S FEES THEREON NOT RECOVERABLE.

SYLLABUS:

Although the Municipal Court of Newark is without authority to issue warrants directed to the sheriff of Licking County, Ohio, the Bureau of Inspection and Supervision of Public Offices is without authority to make findings against such sheriff in favor of defendants, who have paid sheriff's fees which were taxed as part of the costs in the several cases and upon conviction of the defendants were included in the judgment of the court.

COLUMBUS, OHIO, June 11, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge your letter of recent date which reads as follows:

> "The Syllabus of Opinion No. 490, to be found at page 378 of the Opinions of the Attorney General for 1923, reads:
>
> '1. A person arrested for violation of the Crabbe Act may be prosecuted before a mayor.
>
> 2. A mayor may not issue a warrant to a sheriff nor allow sheriff fees for service of a warrant.
>
> 3. No fee can be allowed a sheriff or deputy sheriff for aiding a police officer of a city.'
>
> The Syllabus of Opinion No. 1929, dated April 2nd, 1928, reads:
>
> 'The Municipal Court of Newark (Sections 1579-367 to 1579-415, both inclusive of the General Code), is without authority to issue warrants directed to the sheriff of Licking County, Ohio. Such warrants should be directed to the bailiff or to any police officer of the City of Newark, Ohio.'
>
> Question: Is it the duty of the bureau to make findings in favor of defendants, who have paid sheriff's fees and who have been arrested by such officers on warrants issued to such sheriffs by the mayor's court or the municipal court of Newark, Ohio?
>
> Opinion No. 2884, dated October 1st, 1925, page 681 of 1925 Report, may be pertinent."

You refer to a former opinion of this office which appears in Opinions, Attorney General, 1925, at page 681, as possibly being pertinent to the question you now present. One of the questions therein presented was as follows:

> "If it is your opinion that a justice of the peace has no jurisdiction to try a person upon a waiver of the trial by jury, may the examiners of this department legally make a finding against the justice of the peace and constable, requring them to pay all costs received into the township treasury to be refunded to the persons paying the same, and may a finding be made against the county for all fines assessed in such cases and paid into the county treasury to be refunded to the persons paying the same?"

The third paragraph of the syllabus of this opinion reads:

"If a justice assesses a fine and costs, under Sections 12602 to 12628-1, General Code, and collects same, the Bureau of Inspection and Supervision of Public Offices cannot make an enforceable finding against the justice and constable as error proceedings are necessary to settle questions of jurisdiction, even though the court has no jurisdiction whatsoever."

The following language appears in the opinion:

"It is my opinion, in view of above case and opinion, that a waiver of a trial by jury in such a case does not give the court jurisdiction to impose or collect a fine, except as provided by Section 13511, General Code. The collection of costs in such cases, not coming within Sections 13510 and 13511, is illegal; but findings should not be made by your department as suggested by your third question.

* * *

The fine and costs asssessed is, by statute, a judgment of the court, and the question of jurisdiction on such judgment would have to be decided by error proceedings. Until so raised and decided, it could not be questioned by your department, even the court had not legal right to assume jurisdiction and collect a fine and costs."

Section 11582, General Code, provides in part as follows:

"A judgment is the final determination of the rights of the parties in action. * * *"

It is stated in 33 Corpus Juris at page 1047:

"In its broadest sense a judgment is the decision or sentence of the law given by a court of justice or other competent tribunal as the result of proceedings instituted therein."

Section 12375, General Code, provides:

"In all sentences in criminal cases, including violations of ordinances, the judge or magistrate shall include therein, and render a judgment against the defendant for the costs of prosecution; and, if a jury has been called in the trial of the cause, a jury fee of six dollars shall be included in the costs, which when collected shall be paid to the public treasury from which the jurors were paid."

You will note the provisions of Section 2977, General Code, require that:

"All fees, costs, percentages, penalties, allowances and other perquisites collected or received by law as compensation for services by a sheriff * * *, shall be so received and collected for the sole use of the treasury of the county in which they are elected and shall be held as public moneys belonging to such county and accounted for and paid over as such as hereinafter provided."

Section 2983, General Code, provides in part as follows:

"On the first business day of each month, and at the end of his term of office, each of such officers shall pay into the county treasury, to the credit

of the general county fund, on the warrant of the county auditor, all fees, costs, penalties, percentages, allowances and perquisites of whatever kind collected by his office during the preceding month or part thereof for official services * * *."

I assume from your inquiry that the Municipal Court of Newark, in criminal cases, has issued warrants directed to the sheriff of Licking County and that the fees therefor have been taxed as part of the costs in the several cases and upon conviction of the defendant, such fees were included in the judgment of the court.

Although such court is without authority to direct its warrants to the sheriff I am of the opinion that, having done so, the only parties to complain are the several defendants. I assume that the court had both jurisdiction of the subject matter and the person of the defendants. The judgment of the court and the sentence of the law was rendered as the result of the proceedings instituted therein. The defendants, at the proper time, could have questioned the inclusion of such fees by a motion to retax costs, and proper error proceedings if necessary.

Answering your question specifically I am of the opinion that so long as the judgments of the Municipal Court are unreversed by a competent tribunal your department can not question such judgments. In order words, no finding by your department should be made.

An additional reason exists, in my opinion, why no finding may be made in the case presented by your inquiry. By the terms of Section 274, General Code,

"There shall be a bureau of inspection and supervision of public offices * * * which shall have power as hereinafter provided * * * to inspect and supervise the accounts and reports of all state offices * * * and the offices of each taxing district * * * in the state of Ohio. * * *"

As provided by Section 284, General Code,

"The bureau of inspection and supervision of public offices shall examine each public office * * *. On examination, inquiry shall be made into the methods, accuracy and legality of the accounts, records, files and reports of the office, whether the laws, ordinances and orders pertaining to the office have been observed, and whether the requirements of the bureau have been complied with."

Section 286, General Code, provides in part as follows:

"The report of the examination shall set forth * * * the result of the examination with respect to each and every matter and thing inquired into * * *. If the report sets forth that any public money has been illegally expended, or that any public money collected has not been accounted for, or that any public money due has not been collected or that any public property has been converted or misappropriated, the office receiving such certified copy of such report * * * may, within ninety days after the receipt of such certified copy of such report, institute or cause to be instituted * * * civil actions in the proper court in the name of the political subdivision or taxing district to which such public money is due or such public property belongs, for the recovery of the same and shall prosecute the same to final determination. * * * The term 'public money' as used herein shall include all money received or collected under color of office, whether in accordance with or under authority of any law, ordinance or order, or otherwise, and all public officials, shall be liable therefor. All money received under

color of office and not otherwise paid out according to law, shall be due to the political subdivision or taxing district with which the officer is connected and shall be by him paid into the treasury thereof to the credit of a trust fund, there to be retained until claimed by the lawful owner; if not claimed within a period of five years after having been so credited to said special trust fund, such money shall revert to the general fund of the political subdivision where collected. * * *"

Section 286, supra, was construed in an opinion which appears in Opinions, Attorney General, Vol. II, 1915, at page 1183. The following language appears therein:

"While 'public money' as defined in Section 286 G. C., 103 O. L. 509, 'includes all money received or collected under color of public office,' etc., this definition must be read in the light of the further provisions of the same section at least and particularly that provision which limits the right of recovery of such public money by public authorities to an action 'in the name of the political subdivision or taxing district to which such public money is due.' It is thus clearly indicated that public money comprehends only such money received or collected under color of office, etc., as is due to some political subdivision or taxing district of the state."

I know of no authority in law which would authorize your department to make a finding under the circumstances outlined in your letter for the use and benefit of the several defendants. Any action instituted would necessarily have to be brought in the name of the political subdivision or taxing district to which such public money is due or such public property belongs. These sections of the General Code do not contemplate nor authorize a finding and an action being brought for the uses and benefits of private persons. Such defendants must seek their own remedies, if any now exist, in a court of competent jurisdiction.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2216.

BONDS—AGREEMENT BETWEEN CITY OF PIQUA AND PRIVATE BOND FIRM DISCUSSED—INVALID.

SYLLABUS:

Proposed agreement between a city and a firm engaged in the business of buying and selling bonds, for the sale by the city of notes bearing a specified rate of interest and having an average life of at least one year to said firm at par and accrued interest in consideration of the furnishing of certain services by said firm, which services are beyond the power of the city to contract or pay for, declared invalid.

COLUMBUS, OHIO, June 11, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication requesting my opinion, and which reads as follows: