

It does not appear that the former opinion of this department referred to in your communication involved a consideration of the questions here presented, which are I believe, sufficiently answered by what I have said above.

Respectfully,

GILBERT BETTMAN,
Attorney General.

928.

APPROVAL, BONDS OF CITY OF MARIETTA, WASHINGTON COUNTY—
\$55,000.00.

COLUMBUS, OHIO, September 27, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

929.

SENATE BILL NO. 146—DISPOSITION OF FINES AND PENALTIES COLLECTED BY POLICE AND MUNICIPAL COURTS—IMPLIED REPEAL OF CODE SECTIONS—WHEN MONIES RETAINED BY MUNICIPAL COURT CLERK PAID INTO TREASURY—LIMITATION OF AMOUNTS PAYABLE TO LAW LIBRARY ASSOCIATION.

SYLLABUS:

1. *Section 3056 of the General Code, as amended by the 88th General Assembly (113 O. L. 249), which became effective July 21, 1929, is applicable to all municipal and police courts existing in Ohio on the effective date of said act.*

2. *Said section, as amended, does not repeal special provisions requiring fines and penalties arising under specific laws to be paid into definite and specific treasuries, such as collections of such fines and penalties for violation of the agriculture law, and many other sections. The section does repeal by implication Section 6212-19 of the General Code, relating to the distribution of fines and penalties arising under prohibition laws, to the extent only that five hundred dollars, collected as the county's share, and one thousand dollars collected as the municipality's share, may be subject to the provisions of Section 3056, General Code.*

3. *The amount retained by the clerk of a municipal court equal to the compensation allowed by the county commissioners to the judges, clerks and prosecuting attorney of such court in state cases, should be paid into the municipal treasury when the acts establishing such courts require all fines and penalties collected for state and ordinance's cases to be paid to such treasury.*

4. *In the case of a county, not more than five hundred dollars may be paid in any one year, including the county's share of fines and penalties arising from the prohibition laws.*

5. *In the case of a municipality, a sum not exceeding one thousand dollars per annum of the municipality's share of fines and penalties collected under the state prohibition laws shall be used with other fines as the basis of computation in determining the distribution to the law library association under the provisions of said act. When the sum of one thousand dollars has been so used as a part of said basis, the collections from the prohibition law may no longer be considered, irrespective of the amount that has actually been placed in the treasury of such association from said source, but such collections must then be eliminated from consideration in determining the amount to be distributed to such association in any year, and the balance of such collections shall be distributed in accordance with the provisions of Section 6212-19 of the General Code.*

COLUMBUS, OHIO, September 27, 1929.

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

GENTLEMEN:—In your recent communication you request my opinion relative to the proper interpretation to be given to Section 3056 of the General Code, as amended by the 88th General Assembly in Senate Bill No. 146. After quoting a part of said section, you state:

“Certain municipal court acts provide that all fines and penalties collected for the violation of statutes and ordinances, shall be paid into the municipal treasury. Certain acts provide that all fines and penalties collected for violation of statutes and ordinances are payable into the municipal treasury subject to the provisions of Section 3056, General Code. Other municipal court acts provide that all fines collected for the violation of state laws are payable into the county treasury, and no mention is made of Section 3056, General Code.

The statutes make specific provision for the disposition of certain fines and penalties, as per enclosed schedule, including fines and penalties imposed for the violation of state prohibition laws, and the bureau has been under the impression that such specific provisions relating to special subjects controlled the disposition of fines and penalties in municipal courts notwithstanding that such court acts provide in general terms that all fines and penalties shall be deposited in municipal treasuries.

Question 1. Does the amendment of Section 3056, General Code, require the clerk of every municipal court, existing at the effective date of the amendment of said Section 3056, General Code, to pay over to the county law library association all fines and penalties collected for violation of all statutes including violation of prohibition laws and other laws relating to special subjects, less an amount equal to the compensation allowed by the county commissioners to the judges, clerk, and prosecuting attorney of such county?

Question 2. Is the amount retained by the clerk equal to the compensation allowed by the county commissioners to be deposited in the municipal treasury when the act creating the particular court provides that all fines and penalties collected for violation of both state and ordinance cases, are payable into the municipal treasury?

Question 3. If fines and penalties collected for the violation of statutes relating to special subjects are not to be paid to the county law library association, does the concluding paragraph of amended Section 3056 mean that one thousand dollars of the municipality's share of the fines and penalties collected for violation of state prohibition laws is the minimum amount to be paid the county law library association, or is 15 per cent of one thousand dollars the amount to be paid?”

Section 3056 of the General Code, as amended by the 88th General Assembly (113 O. L., p. 249), provides:

"All fines and penalties assessed and collected by a municipal or police court for offenses and misdemeanors prosecuted in the name of the state, except a portion thereof equal to the compensation allowed by the county commissioners to the judges, clerk and prosecuting attorney of such court in state cases shall be retained by the clerk and be paid by him monthly to the trustees of such law library associations, but the sum so retained and paid by the clerk of said municipal or police court to the trustees of such law library association shall in no month be less than 15 per cent of the fines and penalties collected in that month without deducting the amount of the allowances of the county commissioners to said judges, clerk and prosecutor.

In all counties the fines and penalties assessed and collected by the Common Pleas Court and Probate Court for offenses and misdemeanors prosecuted in the name of the State, shall be retained and paid monthly by the clerk of such courts to the trustees of such library association, but the sum so paid from the fines and penalties assessed and collected by the Common Pleas and Probate Courts shall not exceed five hundred dollars per annum. The money so paid shall be expended in the purchase of law books and the maintenance of such association.

Provided, further, that not to exceed five hundred dollars per annum of the county's share and not to exceed one thousand dollars per annum of the municipality's share of the fines and penalties collected by the Common Pleas, Probate, or a municipal or police court for the violation of the prohibition laws shall be subject to the provisions of this section."

At the outset it must be conceded that the language used by the Legislature in the amended section gives rise to considerable confusion in view of the history of the legislation and the provisions of many other statutes relating to the disposition of fines and penalties. In arriving at the legislative intent, the observations which you make relative to the confusion and lack of uniformity in the distribution of fines, prior to the taking effect of the amended section, is helpful. As you suggest, in some instances, for violation of the express provision of the municipal court acts, a part of such fines were paid to the law library association. In other cases, on account of the specific provisions of statutes relating to municipal courts, requiring all fines and penalties to be paid to the municipal treasury without making any exceptions, it was held that such acts were special and controlled over the general provisions of Section 3056. Furthermore, the fines and penalties arising from the enforcement of the prohibition laws were not subject to the provisions of Section 3056. In comparing the amended section with the original, it has been noted that the only material changes, in so far as your question is concerned, in the first paragraph of said section, are that a "municipal" court has been expressly mentioned, whereas heretofore the section only mentioned "police court"; and, whereas the former section required the payment to be made to the library association quarterly, the new section provides that such payments shall be made monthly. The second paragraph of said section, as amended, relates to the fines and penalties arising in the Court of Common Pleas and Probate Court and contains the identical language which the original act contained except that the word "quarterly," which relates to the time of payment of such fines and penalties to the law library association, has been changed to "monthly." The third and last paragraph of said amended section, which is in the form of a proviso, is entirely new, as the former section contained no such provision whatever.

In the first place, it is believed that one of the purposes of such enactment was

to make the section have general application to all municipal and police courts, irrespective of the special provisions of the various acts establishing municipal courts in order to eliminate the confusion that has arisen, as hereinbefore referred to.

While it is a general rule of law that a special act will control over the provisions of a general act, notwithstanding the general act is later in the order of enactment, however, where a general act expressly and specifically mentions certain things, clearly showing the intent of the Legislature to legislate upon the particular subject, it will control over a special act upon the same subject matter, notwithstanding the act is general.

In the case of *State ex rel vs. Cleveland*, 115 O. S. 484, it was held, as disclosed by the first branch of the syllabus:

"Where it is evident that, by general law, the General Assembly was engaged in specific legislation upon a particular subject, an earlier special act, legislating generally upon the same and other subjects, is superseded by the later legislation upon that particular subject. In this case construing both acts in *pari materia*, it was manifestly the legislative purpose, by its adoption of the later enactment of 1920 (Section 6212-19, General Code; 108 O. L. Pt. 2, 1184), to segregate all fines imposed for violation of criminal offenses under that act from the fines generally imposed and collected under the provisions of the Cleveland Municipal Court Act (Section 1579-41, General Code) adopted in 1915. And to the extent that the provisions of such municipal act relate to the disposition of fines imposed and collected for violation of the 'Crabbe Act', it is inconsistent with and is superseded by the later act specifically controlling that subject."

It is believed that the principle announced in said decision is clearly applicable to the question you present as to whether or not the amendment of Section 3056 operates upon all municipal courts of the state. The provisions of the municipal court acts, for the most part at least, are general to the effect that all fines and penalties shall be paid into the municipal treasury. The amendment of Section 3056 is a general act, but contains specific legislation on a particular subject and, therefore, in so far as it is inconsistent with the former special acts which dealt with the subject generally, will control. In view of the foregoing, I have no difficulty whatever in arriving at the conclusion that all municipal courts in Ohio, at the time of the taking effect of Section 3056, as amended, are subject to the provisions thereof.

However, the conclusion which I have hereinabove reached is only one step in the disposition of the first question which you present. Your question embodies further the proposition as to whether the many special acts which require fines and penalties arising under definite sections of the General Code, to be distributed in a specific manner, are repealed by the amended section. You enclose a list for my convenience, indicating that in some twenty-seven instances the Legislature has seen fit to require such fines and penalties to be paid to a definite treasury. Without undertaking to enumerate the many instances which you cite, it is believed sufficient to state that among them there are included violations of the agricultural law, which require the fines and penalties to be paid to the Secretary of Agriculture, violations of the statutes relating to the employment of children under fourteen years of age, which require the fines to be paid to the humane society, and violations of the law relative to sending children to school, which require the fines and penalties to be paid to the board of education. The many other sections which you mention are very similar in their nature, if not identical, in so far as the requirement that such fines and penalties shall be paid to a specific treasury is concerned. The general rule upon the subject of general and special statutes has been stated as follows:

"Where there is one statute dealing with a subject in general comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to consistent legislative policy; but to the extent of any necessary repugancy between them, the special will prevail over the general statute." (36 Cyc. 1151.)

This rule was cited as authority by the Supreme Court in the Cleveland case hereinbefore mentioned, and is clearly applicable to your question as to whether or not Section 3056, as amended, controls over the special provisions relating to the disposition of fines in particular cases. It is to be distinguished, of course, from the conclusion that has heretofore been reached in reference to the application of the amended section to municipal courts, for the reason that in so far as its application to municipal courts is concerned, the amended law, while general in its nature, specifically mentions municipal courts. Therefore, in so far as it relates to municipal courts, it is general, later and specifically mentions the same.

As to the second proposition, however, we have an entirely different situation in that, as hereinbefore indicated, the statutes are special and in definite and certain language indicate where fines and penalties are to be paid arising from prosecutions instituted under definite and certain laws. Section 3056 relates to fines and penalties generally and, therefore, the provisions of the special legislation upon the subject, in view of the well established rules of statutory construction, must control over the general provisions. There is one exception, however, in so far as your question is concerned, that arises by reason of the proviso contained in the last paragraph of the amended section. In the language used in said paragraph, the conclusion cannot be escaped that it was the intention of the Legislature that fines and penalties arising by reason of prosecutions instituted under the prohibition laws should be available to law libraries to the extent of the limitations set forth therein. As hereinbefore indicated, prior to said amendment the fines and penalties arising under the prohibition law could not be distributed in accordance with the provisions of Section 3056. That proposition, of course, was settled in the Cleveland case hereinbefore referred to, because, while the law was general on the subject, it was special in the sense that it dealt with a particular subject. While said proviso is rather peculiarly worded, construing the same in connection with the entire history of the legislation upon the subject, it is believed the only conclusion that can logically be reached is that the Legislature intended by said enactment to make available the prohibition fines for library purposes to the extent of the limitations therein. The limit prescribed is five hundred dollars in case of a county and one thousand dollars in case of a municipality. Clearly, the section does not mean that the library association is to receive five hundred dollars from the Probate and Common Pleas Courts in fines and an additional five hundred dollars from fines and penalties arising under the prohibition law. The section simply means that the library association is to receive from the county courts the same amount that they heretofore were to receive, except that such amount may be paid out of prohibition fines. The payments to the library association are to be paid monthly. If during the first month there are five hundred dollars available, of course the whole amount apparently should be paid, and when such amount has been paid no other sums may be paid during the year. In the case of a municipality, not more than the sum of one thousand dollars, arising from fines and penalties collected under the prohibition law, shall be subject to the provision of the section.

Some question has arisen as to what the term "subject to the provision of the section" implies. It means that not more than one thousand dollars, collected under the prohibition laws, shall be used in connection with determining the amount of the distribution to be made to the law library association under Section 3056.

Based upon the foregoing discussion, it is my opinion that:

1. Section 3056 of the General Code, as amended by the 88th General Assembly (113 O. L. 249), which became effective July 21, 1929, is applicable to all municipal and police courts existing in Ohio on the effective date of said act.

2. Said section, as amended, does not repeal special provisions requiring fines and penalties arising under specific laws to be paid into definite and specific treasuries, such as collections of such fines and penalties for violation of the agriculture law, and many other sections. The section does repeal by implication Section 6212-19 of the General Code, relating to the distribution of fines and penalties arising under prohibition laws, to the extent only that five hundred dollars, collected as the county's share, and one thousand dollars, collected as the municipality's share, may be subject to the provisions of Section 3056, General Code.

3. The amount retained by the clerk of a municipal court equal to the compensation allowed by the county commissioners to the judges, clerks and prosecuting attorney of such court in state cases, should be paid into the municipal treasury when the acts establishing such courts require all fines and penalties collected for state and ordinance's cases to be paid to such treasury.

4. In the case of a county, not more than five hundred dollars may be paid in any one year, including the county's share of fines and penalties arising from the prohibition laws.

5. In the case of a municipality, a sum not exceeding one thousand dollars per annum of the municipality's share of fines and penalties collected under the state prohibition laws shall be used with other fines as the basis of computation in determining the distribution to the law library association under the provisions of said act. When the sum of one thousand dollars has been so used as a part of said basis, the collections from the prohibition law may no longer be considered, irrespective of the amount that has actually been placed in the treasury of such association from said source, but such collections must then be eliminated from consideration in determining the amount to be distributed to such association in any year, and the balance of such collections shall be distributed in accordance with the provisions of Section 6212-19 of the General Code.

It is believed it is unnecessary to give more specific answers to the particular questions which you submit.

Respectfully,
GILBERT BETTMAN,
Attorney General.

930.

DISAPPROVAL, BONDS OF HUNTSBURG TOWNSHIP, GEAUGA
COUNTY—\$9,500.00.

COLUMBUS, OHIO, September 28, 1929.

Re: Bonds of Huntsburg Township, Geauga County, Ohio, \$9,500.00.

Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—An examination of the transcript relative to the above issue of bonds discloses that these bonds were authorized May 24, 1928, at the time of the authorization of notes. In accordance with the provisions of Section 2293-28, Gen-