

1779.

FEES—MARRIAGE FEES MAY BE CHARGED BY JUDGE OF MUNICIPAL COURT OF MARION—MUST BE PAID INTO CITY TREASURY.

*SYLLABUS:*

1. *The judge of the Municipal Court of Marion may legally tax a fee of \$3.00 for solemnizing marriage.*
2. *Such fee so charged by the Municipal Judge may not be lawfully retained by him, but is required to be paid into the city treasury, the same as other monies received by him in his official capacity.*

COLUMBUS, OHIO, February 28, 1928.

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

GENTLEMEN:—This will acknowledge your letter dated February 23, 1928, which reads:

“Section 1579-770, G. C., Section 10 of the Marion Municipal Court Act reads:

“The judge of the municipal court shall have authority and jurisdiction: To administer an oath authorized or required by law to be administered; to take the acknowledgements of deeds, mortgages or other instruments of writing; and to solemnize marriages.”

Question 1. Is the judge of the Municipal Court authorized to collect a fee for solemnizing marriages?

2. Is the amount of such fee the same as that provided for justices of the peace, to-wit: \$3.00?

3. Must such fees be deposited in the city treasury?”

The several sections of the General Code relating to the Municipal Court of Marion appear as Sections 1579-761 to 1579-812, both inclusive, of the General Code.

Section 1579-773, General Code, provides:

“In the actions and proceedings of which the municipal court has jurisdiction, all laws conferring jurisdiction upon the court of common pleas, a police court, or a justice of the peace, giving such court or officer power to hear or determine such causes, prescribing the force and effect of their judgments, orders or decrees, and authorizing or directing the execution or enforcement thereof, shall be held to extend to the municipal court, unless inconsistent with this act or plainly inapplicable.”

Section 1579-801, General Code, reads in part as follows:

“Except as otherwise provided for in this act (G. C. Sections 1579-761 to 1579-812), in civil actions and proceedings wherein the court of a justice of the peace now has jurisdiction the fees and costs shall be the same and taxed in the same manner as is now, or may hereafter be provided for actions and proceedings heard and determined in a court of the justice of the peace. In other actions and proceedings the fees and costs shall be the

same, and taxed in the same manner, as is now, or may hereafter be, provided for actions and proceedings heard and determined in the court of common pleas."

Section 1579-812, General Code, reads as follows:

"Upon the taking effect of this act no justice of the peace shall be elected in Marion Township, but all the jurisdiction of the justice of the peace and of the mayor as magistrate shall be vested in the Municipal Court of Marion, Ohio."

Section 1579-763, General Code, fixes the salary of the judge of the Municipal Court of Marion and provides:

"Said municipal judge shall receive such compensation, payable out of the treasury of Marion County, not less than fifteen hundred dollars (\$1500.00) per annum, payable in quarterly installments, as the county commissioners may prescribe and out of the treasury of Marion Township, not less than five hundred dollars (\$500.00) per annum, payable in quarterly installments, as the township trustees may prescribe, and such further compensation, not less than two thousand (\$2000.00) per annum, payable in monthly installments out of the treasury of the city of Marion as the council thereof may prescribe."

Section 1579-798, General Code, provides in part as follows:

"There shall be a clerk of the municipal court appointed by the municipal judge to serve during his pleasure \* \* \* . He shall collect all fines, costs and penalties. He shall be the receiver of all monies payable into his office and on request shall pay them to persons entitled thereto. On the first business day of each calendar month he shall pay to the treasurer of the city of Marion to the credit of the municipal court fund, all monies collected by his office for official services; \* \* \* He shall keep a cash book record of all receipts and disbursements, \* \* \* ."

Section 1579-799, provides, in so far as pertinent, as follows:

"All monies paid into the municipal court shall as soon as practicable be deposited by the clerk in such banking institutions, as shall be designated by the judge of the court there to abide the order of the clerk \* \* \* ."

The foregoing sections are the only ones of the General Code relating to the Municipal Court of Marion which are in any way pertinent to your inquiry. While I find no section specifically authorizing the judge thereof to charge a specified fee for solemnizing a marriage, yet Section 1579-801, supra, provides that:

"Except as otherwise provided for in this act in civil actions and proceedings wherein the court of a justice of the peace now has jurisdiction the fees and costs shall be the same and taxed in the same manner as is now, or may hereafter be provided for actions and proceedings heard and determined in a court of the justice of the peace. \* \* \* ."

Your attention is directed to a recent opinion of this office, being Opinion No. 1295, dated November 25, 1927, addressed to you, the syllabus of which reads:

"1. A judge of the Municipal Court of Cincinnati, under the provisions of Sections 1558-14 and 1558-45, General Code, may legally solemnize marriages and charge the same fee that a justice of the peace may charge, which is three dollars.

2. Such fee so charged by the municipal judge may not be lawfully retained by him, but is required to be paid into the city treasury, the same as other monies received by him in his official capacity."

and to a former opinion of this office which appears in Opinions, Attorney General, 1916, Vol. I, page 177, the syllabus of which reads:

"Judges of the municipal court of the City of Columbus are not authorized to retain the legal fee of \$2.00 collected by them for solemnizing marriages. Such fee should be collected by the clerk of the municipal court and paid into the city treasury as other fees and costs collected by him."

It is my opinion that the above quoted sections of the General Code authorize the judge of the Municipal Court of Marion to solemnize marriages the same as justices of the peace might do, and from the provisions thereof it was the intention of the Legislature that said judge may charge the usual fee therefor as charged by justices of the peace.

Specifically answering your first and second questions, it is my opinion that the judge of the Municipal Court of Marion may legally tax a fee of \$3.00 for solemnizing marriage.

In answer to your third question it is my opinion that such judge may not legally retain the fees so charged by him, but that the same shall be paid into the treasury of the city of Marion, the same as other monies received by him in his official capacity.

However, if fees have been retained in reliance upon any letter or ruling from my predecessor, such as was the case referred to in Opinion No. 1774, under date of February 28, 1928, then I think that this holding should be treated prospectively only, and no finding made for fees retained in reliance upon such letter.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1780.

JUSTICE OF THE PEACE—JURISDICTION IN MISDEMEANOR CASES.

*SYLLABUS:*

*Concerning jurisdiction of justices of the peace in misdemeanor cases.*

COLUMBUS, OHIO, February 28, 1928.

HON. E. A. BROWN, *Prosecuting Attorney, Circleville, Ohio.*

DEAR SIR:—This will acknowledge your letter dated February 21, 1928, which reads as follows: