

**Note from the Attorney General's Office:**

1961 Op. Att'y Gen. No. 61-2216 was questioned by  
2003 Op. Att'y Gen. No. 2003-016.

2216

1. THE MONEY COLLECTED BY THE CLERK OF A MUNICIPAL COURT AS COMPENSATION FOR THE JUDGES, CLERK AND PROSECUTING ATTORNEY SHOULD BE PAID TO THE COUNTY TREASURER AND NOT DIRECTLY TO SUCH JUDGES, CLERK, OR PROSECUTING ATTORNEY.

2. THE SUM PAID TO THE BOARD OF TRUSTEES OF THE LAW LIBRARY ASSOCIATION MAY NOT IN ANY MONTH BE LESS THAN 25% OF ALL MONEYS ACCRUING FROM FINES AND PENALTIES BY THE MUNICIPAL COURT FOR OFFENSES AND MISDEMEANORS—§3375.50, R.C.

SYLLABUS:

1. Under Section 3375.50, Revised Code, the portion of the money collected by the clerk of a municipal court, which plus all costs collected monthly in state cases equals the compensation allowed by the board of county commissioners to the judges of the municipal court presiding in police court, clerk and prosecuting attorney of such court in state cases, should along with such costs, be paid to the county treasurer; and such portion and costs may not be paid directly to said judges, clerk, or prosecuting attorney.

2. Under Section 3375.50, Revised Code, the sum paid to the board of trustees of the law library association may not in any month be less than twenty-five per cent of *all* the moneys accruing from fines and penalties and from forfeited deposits, forfeited bail bonds, and recognizances taken for appearances, by the municipal court for offenses and misdemeanors brought for prosecution in the name of a municipal corporation under a penal ordinance thereof, where there is in force a state statute under which the offense might be prosecuted, or prosecuted in the name of the state.

Columbus, Ohio, May 26, 1961

Honorable Everett Burton, Prosecuting Attorney  
Scioto County, Portsmouth, Ohio

Dear Sir :

Your request for my opinion asks the following questions :

“The question to which the Board of County Commissioners is desirous of an answer is as follows: May the municipal corporation collecting fines and penalties as set forth in Section 3375.50 withhold from such monies and pay direct the compensation allowed by the Board of County Commissioners in said section to the Judge of the Court, Clerk and Prosecuting Attorney without first being delivered to the county for distribution to these persons. In the event the answer to this portion of the question is in the affirmative, would the percentage to which the Law Library Association of this county be entitled be based only upon that portion delivered to the county after deducting the sums withheld for the salaries above mentioned?

“If the answer is in the affirmative, it would thereby cause a reduction of income to the Law Library Association and therefore increase the income to the County Commissioners by virtue of the fact that Law Library Association percentage would be based on only that money delivered to the County after deducting the salaries.”

The pertinent part of Section 3375.50, Revised Code, reads :

“All moneys collected by a municipal corporation accruing from fines and penalties and from forfeited deposits, forfeited bail bonds, and forfeited recognizances taken for appearances, by a municipal court for offenses and misdemeanors brought for prosecution in the name of a municipal corporation under a penal ordinance thereof, where there is in force a state statute under which the offense might be prosecuted, or prosecuted in the name of the state, *except a portion of such moneys, which plus all costs collected monthly in such state cases equal the compensation*

*allowed by the board of county commissioners to the judges of the municipal court presiding in police court, clerk and prosecuting attorney of such court in state cases, shall be retained by the clerk of such municipal court, and be paid by him forthwith, each month, to the board of trustees of the law library association in the county in which such municipal corporation is located. The sum so retained and paid by the clerk of said municipal court to the board of trustees of such law library association shall in no month be less than twenty-five per cent of the moneys arising from such fines and penalties and from forfeited deposits, bail bonds, and recognizances taken from appearances, in that month, without deducting the amount of the allowances of the board of county commissioners to said judge, clerk, and prosecuting attorney.* (Emphasis added)

“ \* \* \*

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\* \* \*”

Accordingly, the clerk of the municipal court is required to retain all fines, penalties, forfeited deposits, etc. arising monthly from :

- 1.) Ordinances cases that could have been prosecuted under a similar state statute
- 2.) State cases

Further, the money so retained is to be paid monthly to the board of trustees of the law library association of the county in which the court is located.

Section 3375.50, *supra*, has two other provisions, however, which provide generally that :

(1) The monthly payment to the county law library association is subject to a deduction for the compensation allowed by the board of county commissioners to the judge of the municipal court, clerk of the court and prosecuting attorney in state cases.

(2) The monthly payment to the county law library shall in no month be less than 25% of the *total* monthly collections.

Said Section 3375.50, *supra*, contains no provision as to what is to be done with the portion of the moneys held for compensation of officers. It merely states that such portion is not paid over to the law library. To ascertain the disposition of such funds, therefore, it is necessary to review other sections of law pertaining to municipal courts.

As to the compensation of municipal court judges, Section 1901.11, Revised Code, provides that they “shall be paid in semi-monthly install-

ments, three-fifths of such amount being payable from the city treasury and two-fifths of such amount being payable from *the treasury of the county* \* \* \*.” (Emphasis added.) The same provision is found in Section 1901.31, Revised Code, regarding the compensation of the clerk of the municipal court.

Section 3375.50, *supra*, in referring to the prosecuting attorney, obviously refers to the city solicitor, city attorney or director of law for each municipality who, under the provisions of Section 1901.34, Revised Code, are directed to act as prosecutor for all criminal cases arising from violations of state statutes within the municipality or from violations of municipal ordinances. While compensation of a city solicitor or city attorney is provided for by municipal ordinance, additional compensation may be provided under the provisions of Section 1901.34, *supra*, reading:

\* \* \*

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\* \* \*

“He or his assistants whom he may appoint shall receive for such services additional compensation *to be paid from the treasury of the county* as the board of county commissioners prescribes.” (Emphasis added.)

While, as noted above, Section 3375.50, Revised Code, does not provide for the disposition of the moneys which are collected by the clerk and not turned over to the law library, division (F) of Section 1901.34, Revised Code, contains the general procedure for the disposition of moneys paid into a municipal court. Said provision (F) reads in part:

“The clerk of a municipal court shall receive and collect all costs, fees, fines, penalties, bail and other moneys payable to the office or to any officer of the court and issue receipts therefor, and shall each month disburse the same to the proper persons or officers and take receipts therefor, provided that *finer received for violation of municipal ordinances shall be paid into the treasury of the municipal corporation whose ordinance was violated and to the county treasury all fines collected for the violation of state laws, subject to sections 3375.50 and 3375.53 of the Revised Code.* \* \* \* (Emphasis added.)

Under said Section 1901.34, *supra*, the clerk pays *finer* in ordinance cases to the treasury of the municipal corporation and *finer* in state cases to the county treasury, “subject to sections 3375.50 and 3375.53 of the Revised Code.” Referring again to Section 3375.50, *supra*, it would appear that the money collected from fines, penalties, and forfeitures for

compensation of the judge, clerk and prosecutor is intended to be paid to the county. There is no specific provision to that effect, however, the reference to the "compensation allowed by the board of county commissioners" implies that the money is intended to reimburse the county for its share of said compensation. Thus, the proper person or officer to whom the moneys collected by the clerk should be disbursed, in the case of money collected from fines, penalties, and forfeitures for compensation of the judge, clerk, and prosecutor, would be the county treasurer. I therefore answer your first question in the negative.

As to your second question concerning the percentage to which the law library association is entitled, Section 3375.50, *supra*, reads that the sum retained and paid by the clerk to the law library association "shall" not be less than twenty-five per cent of the monthly collections from fines, penalties, forfeited deposits, etc., arising from the ordinance and state cases "without deducting" the compensation of the judge, clerk, and prosecuting attorney. The only item not subject to the twenty-five per cent minimum is "all costs" which are collected monthly in the state cases. These costs in state cases must go monthly toward the compensation, but only a maximum of seventy-five per cent of the other enumerated sums may be applied on the compensation. Any surplus within said seventy-five per cent not needed to meet the monthly compensation would, of course, be paid to the law library association. Further, I feel it should be pointed out that the twenty-five per cent minimum guaranteed monthly to the law library association would cease at any time during the year that the maximum yearly payment to the law library had been met.

In conclusion, therefore, it is my opinion and you are advised :

1. Under Section 3375.50, Revised Code, the portion of the money collected by the clerk of a municipal court, which plus all costs collected monthly in state cases equals the compensation allowed by the board of county commissioners to the judges of the municipal court presiding in police court, clerk and prosecuting attorney of such court in state cases, should, along with such costs, be paid to the county treasurer; and such portion and costs may not be paid directly to said judges, clerk, or prosecuting attorney.

2. Under Section 3375.50, Revised Code, the sum paid to the board of trustees of the law library association may not in any month be less than twenty-five per cent of *all* the moneys accruing from fines and

penalties and from forfeited deposits, forfeited bail bonds, and recognizances taken for appearances, by the municipal court for offenses and misdemeanors brought for prosecution in the name of a municipal corporation under a penal ordinance thereof, where there is in force a state statute under which the offense might be prosecuted, or prosecuted in the name of the state.

Respectfully,

MARK MCELROY

Attorney General