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COUNCIL, CHAIRMAN—MUNICIPALITY—ACTING AS POLICE JUSTICE—SALARY FIXED BY ORDINANCE OF COUNCIL—SUCH OFFICER PROHIBITED FROM RETAINING ANY FEES ARISING FROM STATE CASES—FEES MUST BE PAID INTO MUNICIPAL TREASURY—SECTIONS 3515-1, 3515-53, 3515-63 G. C.—ARTICLE VI, SECTION 19, 103 O. L., 767.

SYLLABUS:

The chairman of council acting as police justice under authority of Section 3515-53 of the General Code, whose salary has been fixed by an ordinance of council, is prohibited by Section 3515-1, General Code (Section 3515-63), Article VI, Section 19, 103 O. L., 767, from retaining any fees arising from state cases, but must pay the same into the municipal treasury.

Columbus, Ohio, March 22, 1948

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

"A question has arisen in certain municipal corporations operating under the 'city manager plan' of government (Section 3515-1, General Code, Article IV) to which we are unable to find any previous reference or opinion.

"We are enclosing herewith a letter received from our State Examiner assigned to make the current examination of records in one city, together with a copy of the General Ordinance, Section 33-1, fixing the compensation of the police justice and chairman of council. Will you kindly examine the enclosures and give us your opinion and answer to the following questions?

"QUESTION 1. When a member of city council has been elected pursuant to the provisions of Section 3515-1, General Code, Article IV, Section 2 (3515-20) and in accordance with the provisions of Section 3515-53, General Code, Article VI, Section 9, said member of council was duly elected chairman by the members of said council, and by reason of the provisions of Section 3515-53, General Code, aforesaid, is designated as 'police justice', does such member of council acting as police justice have the authority to retain the fees assessed and collected in state cases for his services?

"QUESTION 2. Do the provisions of Section 3515-1, General Code, Article VI, Section 7 (3515-51) pertaining to the qualifications of councilmen prohibit such member of council, who is elected chairman and police justice, from retaining his fees collected for services in state cases?

"QUESTION 3. Does Section 3808, General Code, have any application in such case where the police justice has received and kept the fees assessed and collected for his services in state cases?"

In Article XVIII, Section 2 of the Constitution as adopted in 1912, it was provided as follows:

“General laws shall be passed to provide for the incorporation and government of cities and villages; and additional laws may also be passed for the government of municipalities adopting the same; but no such additional law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law.”

Pursuant to this authority the general assembly enacted a law setting up three special forms of municipal organization any one of which might be adopted by the electors of a municipality. This act, found in 103 O. L., 767, was not completely codified, the first section however being known as Section 3515-1, General Code. Article IV of this law relates to the city manager plan, under which a council varying in number from five to nine, depending on population, is to be elected at large.

Section 7 of Article IV authorizes the council to prescribe, limit or change the compensation of the officers and employes of the municipality.

Article VI of the act in question, contains provisions applicable to all of such optional plans. Section 7 of this article, provides as follows:

“Members of the council shall be electors of the municipality. They shall not hold any other public office or employment except that of notary public or member of the state militia, and shall not be interested in the profits or emoluments of any contract, job, work or service for the municipality. Any members who shall cease to possess any of the qualifications herein required shall forthwith forfeit his office and any such contract in which any member is or may become interested may be declared void by the council.”

Section 9 of Article VI, which the legislature has numbered Section 3515-53, General Code, reads as follows:

“At the first meeting following each regular municipal election, the council shall elect one of its members chairman and one other member as vice chairman. The chairman shall preside at meetings of the council and perform such duties as may be imposed upon him, as presiding officer by the council. In municipalities where a police or municipal court is not otherwise provided, he shall perform all of the general duties provided in section 4258 of the General Code, and shall have such jurisdiction

in civil and criminal matters as is provided by sections 4548 and 4549 of the General Code, and such member of council so elected as such chairman shall be styled 'police justice' in the performance of all judicial duties, and in such style he shall sign all processes and judicial records during the time he shall serve. He shall keep a docket in which he shall enter as provided by law all cases brought before him. Such docket shall be provided by and be the property of the municipality. At the end of each month, such justice shall make a report to the council of all cases brought before him as such police justice.

"When the chairman of council or police justice is absent from the village or city, or is unable for any cause to perform his duties, or in case of death, resignation or removal, the vice-chairman shall act as chairman and perform all of the duties provided for chairman and police justice, pending any future meeting of council at which it may select one of their members who has been elected as provided in this chapter to become the chairman of council and police justice for the period of time that said chairman of council is absent from the village or city, or is incapacitated for any cause, or in the event of death, resignation or removal. The member so selected shall become the chairman of council and police justice for the unexpired term."

It will be observed that the chairman of council, who becomes the police justice for the municipality, is to have and exercise all of the general duties of a mayor as provided in Section 4258 of the General Code, and also is to have such jurisdiction in civil and criminal matters as is provided in Sections 4548 and 4549 of the General Code. I do not consider it necessary for the purposes of this opinion to analyze the nature and extent of that jurisdiction.

With your letter you enclose a copy of an ordinance of the city of Washington C. H., Fayette County, Ohio, fixing the salary of the police justice and chairman of council at the sum of \$1200 per annum. This brings me to a consideration of the provisions of Section 19 of Article VI, which relates to the disposition of fees and perquisites. This section reads in part as follows:

"All fees and perquisites authorized by law or ordinance appertaining to any office or officer in the municipal government shall be paid into the treasury, and unless otherwise provided shall be credited to the general fund, and no officer or employe of the municipality shall receive otherwise than as the representative of the municipality and for the purpose of paying same into the treasury any fee, present, gift, or emolument, or share

therein, for official services, other than his regular salary or compensation, and any officer violating this prohibition shall thereby forfeit his office.”

The provision just quoted seems to dispose definitely of your first question. Since it is made the duty of every officer of the municipality to turn all fees and perquisites over to the treasury under penalty of forfeiting his office, the member of council who has been elected chairman and ex officio police justice, cannot retain the fees assessed and collected in state cases or in other cases, but must turn them into the municipal treasury.

Your second inquiry raises the question whether the provisions of Section 7 of Article VI above quoted, providing that the councilman shall not hold any other public office or employment, prohibits such member of council who is elected chairman and police justice, from obtaining his fees collected for services in state cases. I do not consider that that section has any bearing on the question. There is certainly nothing therein contained that prohibits the councilman from holding also the position of chairman of council and police justice. On the contrary, it is provided in the same act, where the qualifications of councilman are described, that one of such councilmen shall be elected chairman, and become police justice. There is certainly no inconsistency and no relation in this section to the question of fees.

Your third question refers to Section 3808 General Code, and you inquire whether that section has any application to the right to retain fees assessed and collected in state cases. Section 3808 merely provides in part as follows :

“No member of the council or of any board and no officer or commissioner of the municipal corporation, shall have any interest in the expenditure of money on the part of the corporation other than his fixed compensation.”

The fees in state cases do not involve any expenditure of money on the part of the corporation and therefore this section in my opinion has no possible relation to the question you present.

Specifically answering your question it is my opinion that the chairman of council acting as police justice under authority of Section 3515-53 of the General Code, whose salary has been fixed by an ordinance of

council, is prohibited by Section 3515-1, General Code, 103 O. L. 767, Section 3515-63, Article VI, Section 19, from retaining any fees arising from state cases, but must pay the same into the municipal treasury.

Respectfully,

HUGH S. JENKINS,
Attorney General.