

3277.

MUNICIPAL COURT—DISTRIBUTION OF FINES RESULTING FROM VIOLATIONS OF CRABBE ACT—PORTION OF MUNICIPALITY'S SHARE DEDUCTED BEFORE PAYMENT TO COUNTY LAW LIBRARY ASSOCIATION UNDER MANDATE OF SECTION 3056, G. C., PAYABLE INTO MUNICIPAL TREASURY.

**SYLLABUS:**

*Method of distribution of fines to the law library associations discussed.*

COLUMBUS, OHIO, June 1, 1931.

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

GENTLEMEN:—I am in receipt of your request for my opinion, which reads as follows:

"You are respectfully requested to render this department your written opinion upon the following:

Section 6212-19 of the General Code provides for the distribution of fines assessed under the so-called Crabbe Act and section 3056, General Code, makes \$1,000 of the city's share of such fines subject to the provisions of that section. In an opinion rendered to this department, being No. 929 of September 27th, 1929, it is held that section 3056 of the General Code, repeals 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 \$1,000 collected as the municipality's share may be subjected to the provisions of section 3056 of the General Code. In a case where a fine of \$2,000 is assessed under the Crabbe Act in a municipal court and this amount is collected, \$1,000 being due to the state and \$1,000 to the municipality and no other fines in state cases are collected, section 3056, G. C., requires that before distributing to the law library, there shall be deducted the amount paid by the county for the salaries of the judge, clerk and prosecutor of the municipal court. This amount being \$241.66, leaving \$758.34, which is paid to the law library association.

Question 1. Is the \$241.66 remaining in the hands of the clerk of the municipal court payable into the city treasury or into the county treasury?

Question 2. May the \$241.66 be used as a basis for the distribution to the library in the following month or months?"

In my opinion directed to your Bureau, which is found in Opinions of the Attorney General for 1929, page 1434, it was held as disclosed by the 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 agricultural 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."

Under the provisions of Section 6212-19 of the General Code, one half of the fines arising in state cases prosecuted in "duly constituted municipal courts" for violation of the state prohibition law, shall be paid into the general fund of the municipality. As pointed out in the opinion above referred to the amendment of Section 3056 repealed Section 6212-19, only to the extent that it diverts some of said funds for the use of the library association. However, a careful analysis of said opinion will disclose that any sum remaining after the distribution to the library association will be paid to the municipal treasury in accordance with the provisions of said Section 6212-19, General Code.

The fact that the statute provides for the deduction of a portion equal to the compensation allowed by the county commissioners to the judges, clerk and prosecuting attorney of the municipal court does not mean that when said deduction is made the sum shall be paid to the county treasurer. In other words, it appears to have been the intent of the legislature in the enactment under consideration, to hold out of the distribution to the library association for the municipality a sum which would aid in bearing the expense incident to the operation of said court and for some reason the legislature fixed the basis of said deduction with reference to the amount contributed by the county. As hereinbefore suggested, there is nothing in the language used authorizing the payment of such deduction to the county treasury. On the other hand, in a case such as you mentioned, Section 6212-19, General Code, does expressly require the same to be paid into the municipal treasury. Perhaps this conclusion is at variance with what the

legislature intended, but I do not feel that I can disregard the plain meaning of the language used.

In considering the second branch of your inquiry, you are referred to the fifth branch of the syllabus of the opinion above quoted, wherein it is stated in part:

“\* \* 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 \* \*”

In the case you present it would appear that the full one thousand dollars has been used as the basis of distribution during the first month and in accordance with the holding in my said opinion, moneys arising from prohibition fines may no longer be considered during any one year. In other words the second inquiry you present should be answered in the negative.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3278.

ARCHITECT—FOR STATE BUILDING—RIGHT TO ADDITIONAL COMPENSATION FOR TIME SPENT IN SUPERINTENDING PROJECT AFTER COMPLETION DATE INCORPORATED IN CONTRACTORS' CONTRACTS, CONSIDERED.

SYLLABUS:

*Discussion of architect's contract with respect to right to additional compensation.*

COLUMBUS, OHIO, June 1, 1931.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This acknowledges your letter of recent date as follows:

“I am enclosing herewith copy of letter and statement received from....., Architects, for additional fees in connection with the supervision of the Apple Creek project. This additional fee is asked for on account of extra work and superintendence after the time limit was up, namely January 1st, 1931.

For your information, the date set for completion of the construction contract was determined before bids were taken and there was some delay in getting the contract signed up, which naturally held the contractor back in beginning his work. This would therefore move the completion date ahead. The amount of work to be done after January 1st would not require the full time of the Superintendent, including expenses.

If it is determined that it is necessary to pay..... for these services it will be setting quite a precedent, since practically all