

Florence Stowell.....	200 00
Rosa Kaiser.....	200 00
E. H. Huffman.....	100 00
Maude E. Skinner and Clara B. Blessing.....	400 00
Mrs. Mayme Bailey Kraner.....	333 33 $\frac{1}{3}$
Mrs. Lena Kessler.....	200 00
A. E. Davis.....	200 00
The Del Fisher Boat Line Co.....	1,000 00
H. A. Keener.....	400 00

You also forward with your letter a lease to L. H. McNeal for canal lands in Walnut township, Pickaway county, value of \$600.

I have carefully examined said leases, find them correct in form and legal, and am therefore returning the same with my approval endorsed thereon.

Respectfully,

JOHN G. PRICE,
Attorney-General.

2154.

MUNICIPAL COURT—ACT ESTABLISHING COURT PROVIDES NO COURT COSTS AND FEES—SHOULD COLLECT SAME—SECTION 2898 G. C. ET SEQ. GOVERNS.

Although court costs and fees are not specially provided for in an act establishing a municipal court, it is intended that costs and fees should be collected unless otherwise provided for therein.

The court costs and fees in a municipal court are the same as in section 2898 et seq. G. C., unless therein otherwise provided.

COLUMBUS, OHIO, June 9, 1921.

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

GENTLEMEN:—Your letter of recent date received in which you request the opinion of this department, as follows:

“We respectfully refer you to sections 1579-183 to 1579-194 G. C., covering the municipal court of Middletown, Ohio, and beg to advise that the officers of said court assess no costs or fees whatsoever.

Question: Is such procedure legal?”

Through a personal conference it is learned that the basis of your inquiry is a desire to learn if the municipal court of Middletown should assess costs and fees.

In considering this matter it is necessary to take into consideration certain sections or parts thereof of H. B. No. 529, General Code sections 1579-183 to 1579-194, creating a municipal court for the city of Middletown, as follows:

“Section 1579-183. That there shall be and hereby is created a court for the city of Middletown, Butler county, Ohio, to be styled ‘the municipal court of the city of Middletown, Ohio,’ and it shall be a court of record. * * *.”

"Section 1579-184. That such municipal court shall have jurisdiction of all offenses under the ordinances of the city of Middletown, Ohio, now or hereafter enacted, and of all misdemeanors committed within the corporate limits' of the city and to hear and finally determine all such cases and to impose the penalty prescribed by law or ordinance. Cases in which the accused is entitled to a trial by jury shall be so tried unless the accused, in writing, waive a jury.

Such court shall have further jurisdiction in all criminal cases as now or may be hereafter conferred upon mayor's courts, police courts or other similar courts by the general assembly of the state of Ohio and as an examining court to try persons accused of the commission of any felony or other crime or misdemeanor under the laws of the state of Ohio."

"Section 1579-186a. That all fines prescribed as a penalty for the commission of any offense and all costs assessed against any offender in said municipal court shall be paid into the city treasury to the credit of such fund as may be directed by the city commission of said city."

"Section 1579-188. The city commission of Middletown, Ohio, may designate its clerk or such other person as it may deem proper to act as clerk of such municipal court. * * *"

Said section further provides as follows:

"He shall receive and collect all costs and fines and shall pay the same monthly into the treasury of the city of Middletown, Ohio."

It is to be noted that costs and fees are mentioned several times in the foregoing citations, and that apparently the intent of the bill establishing the municipal court of Middletown was to collect costs. Further, an examination of the municipal acts shows that the general practice in the creating of municipal courts is to provide for the charging of costs and fees.

Referring back to General Code section 1579-188, it is specifically provided therein that one of the duties of the clerk is that

"He shall receive and collect all costs and fines and shall pay the same monthly into the treasury of the city of Middletown, Ohio."

This duty is mandatory and being so must contemplate the assessing of costs and fees. Section 1579-184, above quoted, outlines the jurisdiction of the Middletown municipal court and designates the courts it supersedes. This indicates that the intention was that the new court should carry on the functions of the courts it superseded. The following section of the General Code is applicable:

"Section 2898. The provisions prescribing the duties of clerks of the court of common pleas shall, so far as they are applicable, apply to the clerks of other courts of record."

The meaning of this last above mentioned statute is clear and applies to courts of record, and remembering the fact that the municipal court of

Middletown is a court of record (G. C. section 1579-183) the costs of said court are fixed by General Code section 2900 et seq. in so far as such costs are applicable thereto.

It should be considered in connection herewith that S. B. No. 14 (section 3005 G. C.) an act providing for costs in municipal courts and standardizing costs therein, is now the law governing costs and fees in municipal courts.

While the legislative expression in the Middletown municipal court act is not definite, yet reading the whole act and in view of General Code section 2898 et seq. it is clear that it was intended that costs should be collected in the municipal court of Middletown, Ohio.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2155.

BANKS AND BANKING—HOW TO DETERMINE VALUE OF SHARES OF BANK STOCK UNDER PROVISIONS OF SECTION 5412 G. C.—NOT PROPER TO DEDUCT FROM AGGREGATE VALUE, THE VALUE OF NON-TAXABLE SECURITIES.

In determininig the value of the shares of bank stock under the provisions of section 5412 of the General Code, it is not proper to deduct from the aggregate value of such shares the value of non-taxable securities.

COLUMBUS, OHIO, June 9, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The commission requests the opinion of this department upon the following question:

“In determining the value of the shares of bank stock under the provisions of section 5412 of the General Code is it proper to deduct from the aggregate value of such shares the value of non-taxable securities?”

This question seems to be definitely determined in the case of *Cleveland Trust Co. vs. Lander*, 62 O. S., 266. In the opinion in that case, per Burket, J., the following is found:

“It is also urged that when section 5219 mentions ‘other moneyed capital in the hands of individuals,’ it means other taxable moneyed capital, and that as federal bonds are not taxable they should be deducted from the return of the bank before fixing the amount from which to ascertain the value of each share, and *People vs. Commissioners*, 4 Wallace, 244, 256, and *Mercantile Bank vs. New York*, 121 U. S. 138, are cited and relied upon. These cases do say that the phrase means ‘other taxable moneyed capital.’ But conceding that to be the meaning, it does not aid the cause of the plaintiff in error. Certainly the meaning is ‘taxable capital,’ because if it meant non-taxable capital, the shares of national banks could not be taxed at all. And here lies the distinction, the tax is upon the shares, and not upon the cap-