

I find no former opinions of this department, nor court decisions covering your question.

You will note that Section 5894, General Code, provides for a fee of fifty dollars for "each place where such business is carried on," and Section 12680, General Code, fixes a penalty if a receipt is not displayed "in a conspicuous place in the building where such business is located." So the answer to your question hinges on the interpretation of these two statutes.

Webster's definition of the word "place" is as follows:

"Any position of space regarded as measured off or distinct from all other space, as related to any other position, or as appropriated to some definite object or use; separate division; apartment; room; position; ground; site; spot; rarely unbounded space."

Certainly the business carried on by this company on the platform is not in the building where the "receipt" is displayed, nor is the business conducted in the trains in the train shed, in the building.

Each of these would be a separate "place".

No one would claim that such receipt could be posted in the lobby of a business block and a person or firm sell cigarettes in several different store rooms in such building.

One receipt cannot be displayed in more than one place, nor can an agent carry such receipt or display and do business all over a city on such receipt.

You are governed by the facts in each case passed on and, as a matter of fact, in this case the business in the depot proper is conducted in a separate enclosed place, as is the place on the platform and in the cars, not connected in any way and are in no sense one place.

In my opinion, these are separate places and each should pay a separate tax and display a separate receipt for each place or space occupied by the business.

Respectfully,

C. C. CRABBE,
Attorney General.

1477.

DISPOSITION OF FUNDS PAYABLE TO MUNICIPAL TREASURY BY
VIRTUE OF PROVISIONS OF THE MASSILLON MUNICIPAL
COURT ACT.

SYLLABUS:

Funds payable to the municipal treasury by virtue of the provisions of the Massillon Municipal Court Act other than proceeds of suits for penalties mentioned in Section 4607 G. C. may be distributed to the safety, service and general fund if council by ordinance so directs.

COLUMBUS, OHIO, May 16, 1924.

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

Gentlemen:—

You have requested my opinion as follows:

"The Massillon Municipal Court Act, Section 1579-416 to 1579-458 G. C. inclusive, provides in part:

In Section 1579-444 that the clerk of the municipal court shall receive and collect all costs, fines and penalties and he shall pay the same quarterly into the treasury of the City of Massillon and take a receipt therefor.

There is no direction in the above act for the deposit of fines, penalties and costs in a particular fund. At the present time these moneys are paid into the general fund of the city, from which fund the expenses of conducting the court are paid.

Question: May the fines, costs and penalties collected in the above mentioned court and deposited in the city treasury be distributed between the safety, service and general fund if council by ordinance so determines?"

In considering your question it may be profitable to consider the provisions of Section 2296, which reads as follows:

"The county commissioners, township trustees, the board of education of a school district, or the council, or other board having the legislative power of a municipality, may transfer public funds, except the proceeds or balances of special levies, loans or bond issues, under their supervision, from one fund to another, or to a new fund created under their respective supervision, in the manner hereafter provided, which shall be in addition to all other procedure now provided by law."

From the above quoted section it would appear that after said funds reach the general fund it would be possible for the municipality to transfer such funds under the provision of the section. However, while you do not so state it is probable that you contemplate a direction on the part of the municipality as to the division of the funds received through the agency of the municipal court before they reach the general fund or the treasury of the municipality.

The general statutes provide that fines collected shall be paid into the county treasury unless otherwise provided by law. In the case under consideration, of course, it is otherwise provided by law. Such funds are payable into the municipal treasury.

It seems to be the established policy of this state that in instances wherein funds are payable generally to a given subdivision that the officials of such subdivision may determine as to what fund shall be credited with such funds in the absence of explicit provision.

In the case of *State vs. Allen*, 86 O. S. 244, it was held:

"Where funds reach a county treasurer, either by gift or otherwise, that belong to no particular fund, or where there is nothing whatever to show in which fund the money belongs, the board of county commissioners has authority to determine and direct the fund to which such moneys shall be credited."

While, of course, the case in question discussed the county treasury there is no valid reason disclosed why said rule does not by analogy apply to municipalities in cases where funds are payable to it and no particular fund is designated. However, it has been noted that Section 4607 G. C. should be taken into consideration which provides:

"All fines imposed upon members of the fire department of the munic-

ipality by discipline or punishment by the authority having charge or control thereof, and the proceeds of all suits for penalties for the violation of a statute of the state or ordinances of such municipality with the execution of which such department is charged, and licenses or other fees payable thereunder, shall be credited to the pension fund."

In view of the latter section it would seem that penalties recovered in suits for violation of the state statutes or ordinances, the executions of which the fire department is charged, are payable into the firemen's pension fund.

It, therefore, is the opinion of this department that funds payable to the municipal treasury of Massillon by virtue of the provisions of Section 1579-444 of the General Code, other than those mentioned in Section 4607 G. C. may be distributed to the safety, service and general fund if council by ordinance so provides.

Respectfully,
C. C. CRABBE,
Attorney General.

1478.

APPROVAL, BONDS OF VILLAGE OF NEWCOMERSTOWN, TUSCARAWAS COUNTY, \$7,654.42, TO EXTEND TIME OF PAYMENT OF CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, May 16, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

1479.

APPROVAL, BONDS OF VILLAGE OF BROOK PARK, CUYAHOGA COUNTY, \$5,333.33, ROAD ASSESSMENT BONDS, SERIES NO. 1.

COLUMBUS, OHIO, May 16, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

1480.

APPROVAL, BONDS OF VILLAGE OF PARMA HEIGHTS, CUYAHOGA COUNTY, \$17,760.00, "SETTLEMENT ROAD WATER BONDS".

COLUMBUS, OHIO, May 16, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.