of the property and business of a bank, to sell the real estate and personal property not only for cash, but "on such terms as the court shall direct."

I would further call your attention to the fact that in each of these sales under this section of the statutes, it is necessary to obtain an order from the court of common pleas which would be in effect a confirmation of sale including the terms and conditions thereof.

While we find no decisions in Ohio of the Supreme Court or Appellate Courts, it is well to bear in mind that this section of the statute is copied almost verbatim from the New York Banking Statute and modeled somewhat after a similar section in the National Banking Act.

In the case of *Gockstetter* v. *Williams,* 9 Fed. (2d,) 354, the purchaser from the receiver, of certain assets, agreed to pay therefor a sum equal to the face value of the secured and preferred claims and fifty percent of the claims of unsecured creditors in five equal installment, the first as soon as practicable, but not later than thirty days after the sale, and the remaining installments on the first day of December of each year thereafter, all unpaid installments to bear interest at the rate of two and one-half percent per annum. Section 5234, Revised Statutes, construed in the case above cited also conained the language "may sell all the real and personal property of such association on such terms as the court shall direct." The first branch of the syllabus reads as follows:

> "Receiver's sale of assets in the course of liquidation need not be for cash or for a price definitely fixed at the time of sale, if provisions are made for rendering it certain."

See also the case of *Jackson* v. *McIntosh,* 12 Fed. (2d.) 676.

I am therefore of the opinion that when it appears to the Superintendent of Banks that the transaction is reasonable, proper and business-like in all respects, and will expedite the liquidation of the bank, upon obtaining the approval of the court of Common Pleas having jurisdiction in the matter he may sell an asset or assets of the bank being liquidated and take in part payment the note of the purchasers secured by second lien on the purchased assets.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3866.

FINES—FROM STATE CASES IN POLICE COURT, MARIETTA—DISTRIBUTED UNDER SECTION 3056, GENERAL CODE.

SYLLABUS:

Fines in state cases arising in the police court of Marietta, are subject to the provisions of Section 3056 *of the General Code, in its present form, and also as enacted by the* 88th *General Assembly.*

COLUMBUS, OHIO, December 16, 1931.

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

GENTLEMEN:—This acknowledges receipt of your letter which reads as follows:

> "House Bill No. 489, 113 O. L., page 764, establishes a Police Court

in the City of Marietta. This act became effective July 28th, 1929. Section 5 of the Act, Section 14693-4, G. C., reads:

'The court shall have power to compel the attendance of witnesses and jurors and parties; jurors shall have the qualifications and be subject to the challenge of those in court of common pleas in like cases; they shall be selected, summoned and impaneled in accordance with an ordinance of the council; or if no such ordinance is in force, in accordance with a rule of court and they shall receive the same fees as are allowed jurors in courts of justices of the peace in criminal cases. All fees in such court shall be the same as before the justice of the peace in like cases. All fees, fines, forfeitures and expenses collected shall be disposed of and accounted for in the same manner as provided for a mayor under the provisions of section 4270 of the General Code.'

Section 3056, G. C. as amended 113 O. L., page 249, effective July 21st, 1929, provided in part that all fines and penalties collected by a municipal or police court in state cases, less certain specified deductions, shall be paid to the county Law Library Association.

Question. Are any part of the finest and penalties collected in the Police Court of the City of Marietta in state cases, payable to the Washington County Law Library Association?"

Your inquiry presents the question as to which act mentioned takes precedence, in view of the fact that there is some apparent conflict with regard to the disposition of fines, etc. In other words, section 3056 of the Code, which was amended by the 88th General Assembly, and again by the 89th General Assembly, provides as follows:

"All fines and penalties assessed and collected by a municipal or police court for offenses and misdemeanors prosecuted in the name of the state, except a portion thereof equal to the compensation allowed by the county commissioners to the judge of the municipal court presiding in police court, clerk and prosecuting attorney of such court in state cases shall be retained by the clerk and be paid by him monthly to the trustees of such law library associations, but the sum so retained and paid by the clerk of said municipal or police court to the trustees of such law library association shall in no month be less than 15 per cent of the fines and penalties collected in that month without deducting the amount of the allowances of the county commissioners to said judges, clerk and prosecutor.

In all counties the fines and penalties assessed and collected by the common pleas court and probate court for offenses and misdemeanors prosecuted in the name of the state, shall be retained and paid monthly by the clerk of such courts to the trustees of such library association, but the sum so paid from the fines and penalties assessed and collected by the common pleas and probate courts shall not exceed five hundred dollars per annum. The money so paid shall be expended in the purchase of law books and the maintenance of such association.

It is provided, however, that not to exceed five hundred dollars per annum of the county's share and not to exceed one thousand dollars per annum of the municipality's share of the fines and penalties collected by

> the common pleas, probate, or a municipal or police court for the violation of the prohibition laws shall be subject to the provisions of this section, and provided further that the total amount paid hereunder in any one calendar year by the clerk of any municipal or police court to the trustees of such library association shall in no event exceed six thousand dollars per annum; and when that amount shall have been so paid to the trustees of such law library association, in accordance with the foregoing provisions of this section, then no further payment shall be required hereunder, in that calendar year, from the clerk of such court."

If this section is applicable, then it must be held to override the provision with respect to the police court in Marietta contained in section 5 of the act, which is quoted in your letter, since that section requires such fines to be distributed in accordance with section 4270 of the General Code, or, in other words, to be paid into the municipal treasury.

Manifestly, section 3056 of the Code, which by its terms, applies to all municipal and police courts, must be held to supersede any inconsistent provisions in earlier municipal or police court acts. This is so, because, while municipal and police courts are generally established by special act, and therefore the provisions thereof must be regarded as special in character, yet the legislature is charged with knowledge of the fact that these courts are created by special enactment and, accordingly, no doubt had the definite purpose in the enactment of section 3056 of the Code of overriding any special provisions theretofore existing. It follows that there can be no question concerning the disposition of fines and penalties accruing since the effective date of the latest amendment of Section 3056, which was July 23, 1931. These fines and penalties must be paid as provided by the section as amended, and, consequently, the proper proportion thereof is payable to the county law library association.

A much closer question exists as to the disposition of fines and penalties accruing prior to that date. At that time the situation was as is disclosed in your letter; that is, the police court act of Marietta actually became effective on July 28, 1929, while the amendment of Section 3056 of the Code in 113 O. L., became effective prior thereto, on July 21, 1929. In other words, the situation you describe, comes about by reason of the constitutional provision that a bill shall be submitted to the Governor for his approval and an act shall not go into effect until ninety days after it is filed in the office of the Secretary of State. The history of the legislation, however, discloses that the bills were signed in the reverse order of their effective dates by the presiding officers in the Legislature. Section 3056 of the General Code, was signed on April 6, 1929, whereas the Marietta Police Court Act was signed on April 5, of the same year. In view of this situation, a difficult problem is presented in view of the general rule of law to the effect that where the Governor has the veto power he is to be regarded as a part of the law making power and, that his act in approving the law is the last action which breathes the breath of life into a statute when the case of *State* v. *Lathrop,* 93 O. S., 79 is considered. In that case, in the opinion by Chief Justice Nichols, the following is stated:

> "The court of appeals based its decision on the fact that the act signed on the 2d was repealed by the act of the governor in signing the act on the 3d, and counted of no effect the fact that the legislature

passed the measure so held to have been repealed two days later than the measure which the court holds repealed it.

The effect of this decision is that the bill last signed, although first passed, repealed the act first signed, although later passed.

We thus have presented the anomalous situation of the governor being granted an additional power of veto not contemplated by the constitution. He may, if this decision is permitted to stand, by mere order of the time of signing, determine which of the acts relating to the same subject-matter may survive, and, although signing both, may kill the one as effectively as if he had vetoed it; and furthermore—as happened in this instance—may defeat the manifest purpose of the legislature by signing first in order the later expression thereof, and do this, it would appear, without intending to do so, and in effect defeat not only the intention of the legislature, but his own as well."

From the foregoing, it will be seen that it could well be argued that if the presiding officer of the Legislature signs a bill later than another on the same subject, such action will control as to which becomes a law. On the other hand, it could well be maintained that the time of the action of the Governor in approving a bill might control. However, it is believed that other reasons may well dispose of the present problem. In my opinion found in Opinions of the Attorney General for 1929, page 1435, in construing Section 3056, supra, as amended by the 88th General Assembly, it was pointed out that the evident purpose of the amendment was to clarify the law so as to eliminate the confusion that had theretofore existed with reference to the distribution of fines arising in municipal courts. The following is quoted from the body of said opinion:

"In the first place, it is believed that one of the purposes of such enactment was to make the section have general application to all municipal and police courts, irrespective of the special provisions of the various acts establishing municipal courts in order to eliminate the confusion that has arisen, as hereinbefore referred to.

While it is a general rule of law that a special act will control over the provisions of a general act, notwithstanding the general act is later in the order of enactment, however, where a general act expressly and specifically mentions certain things, clearly showing the intent of the Legislature to legislate upon the particular subject, it will control over a special act upon the same subject matter, notwithstanding the act is general.

In the case of *State ex rel* vs. *Cleveland,* 115 O. S. 484, it was held, as disclosed by the first branch of the syllabus:

'Where it is evident that, by general law, the General Assembly was engaged in specific legislation upon a particular subject, an earlier special act, legislating generally upon the same and other subjects, is superseded by the later legislation upon that particular subject. In this case construing both acts in pari materia, it was manifestly the legislative purpose, by its adoption of the later enactment of 1920 (Section 6212-19, General Code; 108 O. L., Pt. 2, 1184), to segregate all fines imposed for violation of criminal offenses under that act from the fines generally imposed and collected under the provisions of the Cleveland Municipal Court Act (Section 1579-41, General Code) adopted in 1915. And to the

extent that the provisions of such municipal act relate to the disposition of fines imposed and collected for violation of the "Crabbe Act", it is inconsistent with and is superseded by the later act specifically controlling that subject.'

It is believed that the principle announced in said decision is clearly applicable to the question you present as to whether or not the amendment of Section 3056 operates upon all municipal courts of the state. The provisions of the municipal court acts, for the most part at least, are general to the effect that all fines and penalties shall be paid into the municipal treasury. The amendment of Section 3056 is a general act, but contains specific legislation on a particular subject and, therefore, in so far as it is inconsistent with the former special acts which dealt with the subject generally, will control. In view of the foregoing, I have no difficulty whatever in arriving at the conclusion that all municipal courts in Ohio, at the time of the taking effect of Section 3056, as amended, are subject to the provisions thereof."

While, of course, that opinion covered only cases wherein the municipal court acts were earlier in the order of enactment than Section 3056, General Code, it is believed that the principle therein enunciated has application here. That is to say, the municipal court acts generally refer to the disposition of fines arising in the municipal court, whereas Section 3056, supra, specifically provides for the distribution of parts of such fines. In any event, the intent of the legislature is the "pole star" of all judicial interpretation, and it has been frequently held that when two provisions of a statute are in conflict "that provision which is most in harmony with the fundamental purpose of the statute must prevail." *Industrial Commission* v. *Hilhorst,* 117 O. S., 337.

Based upon the foregoing citations and discussion, it is my opinion that fines in state cases arising in the police court of Marietta, are subject to the provisions of Section 3056 of the General Code, in its present form, and also as enacted by the 88th General Assembly.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3867.

COUNTY COMMISSIONERS — MAY RESCIND RESOLUTION FIXING MILEAGE RATE FOR AUTOMOBILES USED BY SHERIFF.

SYLLABUS:

A board of county commissioners may rescind a resolution relative to an administrative function, such as setting a flat mileage rate for automobiles furnished and used by a sheriff.

COLUMBUS, OHIO, December 16, 1931.

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

DEAR SIR:—This will acknowledge receipt of your recent request for my opinion which reads:

"Under date of January 5th, 1931, the Board of County Commis-