

April 22, 2021

The Honorable Mark J. Tekulve
Clermont County Prosecuting Attorney
101 Main Street, 2nd Floor
Batavia, Ohio 45103

SYLLABUS: 2021-008

The clerk of a county municipal court is not required to accept possession and control of records of mayor's courts relating to inactive cases of a village upon the dissolution of that village.



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OPINION NO. 2021-008

The Honorable Mark J. Tekulve
Clermont County Prosecuting Attorney
101 Main Street, 2nd Floor
Batavia, Ohio 45103

Dear Prosecutor Tekulve:

You requested an opinion from my office regarding whether a county municipal court is required to accept certain records. I have framed your question in the following manner:

Is the clerk of a county municipal court required to accept possession and control of records of mayor's courts relating to inactive cases of a village upon the dissolution of that village?

You report that the voters of two villages in Clermont County, pursuant to R.C. 703.20, voted to dissolve their villages. Both villages operated mayor's courts pursuant to Revised Code Chapter 1905. You have asked whether the Clermont County Municipal Court is required to accept possession and control of the records relating to inactive cases of the dissolved mayor's courts.

I conclude that the answer is "no."

I

Municipal courts, as creatures of statute, are limited to the powers granted to them by statute. *State ex rel. Finley v. Miller*, 128 Ohio St.442, 443, 191 N.E. 465, 466 (1934); 1980 Op. Att’y Gen. No. 80-073, at 2-291. Because the position of municipal court clerk is created by statute, R.C. 1901.31, the same principle applies: a clerk has only those powers assigned to her by statute. *See, e.g.*, 1988 Op. Att’y Gen. No. 88-093, at 2-446 to 2-447; 1984 Op. Att’y Gen. No. 84-028, at 2-82 to 2-83.

There is no statute that requires a municipal court clerk to take any records from a mayor’s court when a village dissolves. No provision in the Revised Code chapter on records, the chapter on municipal dissolutions, the chapters on county, municipal, or mayor’s courts, or any other chapter, contains such a requirement. *See* R.C. Chapters 149, 703, 1901 through 1909. Nor can I find any prior court or Attorney General opinions so requiring.

Moreover, in other circumstances, the legislature *has* required a municipal court clerk to take possession of mayor’s court records. A statute creating certain municipal courts, and terminating the jurisdiction of certain mayor’s courts, contains a provision requiring that certain records of the terminated mayor’s court be transferred to the municipal court. R.C. 1901.04. But the statute explicitly states that it applies to mayor’s courts “*terminated by this section.*” R.C. 1901.04 (emphasis added.) A mayor’s court that was terminated because its village dissolved pursuant to R.C. 703.20 was not terminated pursuant to R.C. 1901.04. Similarly, when it passed a bill eliminating certain mayor’s courts, the legislature included a non-codified bill provision that discussed how pending cases in the courts should be transferred. Sub. H.B. No. 606, 129th Gen. A. (2011), at 19. These provisions show that the legislature knows how to require transfer of records from mayor’s courts to municipal courts if it

chooses to do so. And it has not done so for the situation of when a village dissolves.

Given that no statute requires a municipal court clerk to take inactive case records of a mayor's court from a dissolved village, the clerk is under no obligation to accept such records.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that:

The clerk of a county municipal court is not required to accept possession and control of records of mayor's courts relating to inactive cases of a village upon the dissolution of that village.

Respectfully,



DAVE YOST
Ohio Attorney General