

"Contempts of court being punished as offenses against the administration of justice and not as personal affronts to those who exercise judicial functions, it is not indispensable that the violation of an injunction be punished by the judge who made the decree."

Menuz v. Grimes Candy Co.,  
77 O. S., 386.

Section 12142 applies to sections 12136 and 12137;  
46 O. S., 473;

Connell v. State of Nebraska, 80 Neb. 296:

"A prosecution for contempt of court is a criminal proceeding. The defendant is entitled to the benefit of any reasonable doubt as to his guilt."

Pattison's-Wilson's Criminal Ev., 906.  
114 N. W., 294.  
147 Fed. 947.

While contempt of court is a quasi-criminal offense, it is provided for by statute in Ohio (and is also an inherent power in the Court) and, having a penal section fixing the limitations of fines to be assessed therefor, is an offense within the provisions of section 3056 G. C., and fines collected for contempt are payable into a law library as provided therein.

Respectfully,  
C. C. CRABBE,  
*Attorney-General.*

977.

MUNICIPALITIES—WATER CONSUMERS OUTSIDE A MUNICIPALITY WHO HAVE INSTALLED FIRE HYDRANTS CONNECTING WITH CITY WATER WORKS SYSTEM NOT ENTITLED TO RECEIVE FREE WATER—VALIDITY OF SECTION 3967 G. C. AS CONSTITUTIONAL STATUTE NOT CONSIDERED.

**SYLLABUS:**

*Section 3963 and 3967 G. C. were enacted to apply to the property and the people within the municipal corporations of the state.*

*Water supplied to people living outside such municipalities is intended to be paid for by those receiving such service for whatever purpose the same is used.*

COLUMBUS, OHIO, December 8, 1923.

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

GENTLEMEN:—You have submitted the following request for an opinion:

"Section 3963 G. C. provides in part that:

'No charge shall be made by the city or village, or by the waterworks department thereof, for supplying water for extinguishing fire, cleaning fire apparatus, or for furnishing or supplying connections with fire hydrants, and keeping them in repair for fire department purposes, etc.'

Section 3967 G. C. provides that:

'When a person or persons at his or their expense have laid down and extended mains and water pipes beyond the limits of a municipal corporation, and the corporation by resolution of the council, has authorized the proper officer of the water works to superintend or supervise the laying and extension of such mains and water pipes, the corporation shall furnish water to the residents and property holders on the line of such mains and water pipes, subject to the same rules and regulations that it furnishes water to its own citizens, except that the rates charged therefor shall not exceed those within the corporation by more than one-tenth thereof.'

Section 6, Article XVIII of the Constitution provides that:

'Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality.'

Question: In view of these provisions may a city legally supply free water for fire protection to fire hydrants installed outside of the corporation by persons, who are also consumers, at their own expense but under the supervision of the city water works officers?"

Section 6 of Article XVIII of the Constitution of Ohio, which you quote, is a self-executing provision. It provides for the sale of the service or product of a public utility. By virtue of its provisions municipal corporations owning and operating any public utility may sell and deliver "fifty per cent of the total service or product supplied by such utility within the municipality." To sell and deliver some service or other is the thing authorized. To furnish free service of an utility, if allowable, depends upon some other permissive provision or statute.

Section 3963 G. C., which in part is quoted in your request, specifically allows free water service for certain public uses mentioned therein. None of the uses are for a private purpose. This section was formerly section 2417 R. S. and was of long standing when in 1912 the above section was placed in the Constitution of the State. The provision in section 3963 G. C. giving free water service to charitable institutions has been declared to be unconstitutional because not of uniform operation throughout the state as required by section 26 of Article II of the Constitution. *Village of Euclid v. Camp Wise*, 102 O. S., 207. The familiar rule of statutory construction that "the expression of one thing excludes another" if applied to this section certainly does not provide free water to persons living outside of a municipal corporation for the extinguishment of fires. This section as last amended provides a method for determining the rate for water service furnished to boards of education when the area of the school district is more extensive than that of the municipality. The district containing no area outside of the limits of the municipal corporation or when the limits of the school district and a municipal corporation are the same the board of education is allowed free water service.

Such provision as this would seem by fair inference to indicate that the free water privileges of the section apply only to people and property within the limits of the municipality and are not intended to be extended to territory or property or persons outside thereof.

Section 3967 G. C. quoted in your letter, in brief provides, that when a person has put down water mains at his own expense extending to his property outside the corporate limits laid under supervision of the proper officials of the municipality authorized by resolution of council so to do, the water service furnished would be at a rate not to exceed ten per cent of the rate charged to residents of the municipality. The rate thus provided is intended to secure to the persons laying the main a fixed amount and is intended to secure the proper laying of approved water mains and connections by competent or experienced persons and to make such extension of the water works system of record in the municipality. The indiscriminate tapping and extension of water mains by residents outside of a municipality and the use of materials not standard or not similar to those used in a municipality is thus avoided and proper repairs and inspection and the waste of water from defective installation is secured.

But it is to be noticed that the fixing of a rate refutes the idea of free service. The purpose for which water service is given is not stated or modified except that supplying it is subject "to the same rules and regulations that it furnishes water to its own citizens." I think it may be presumed that if the mains laid at the expense of a non-resident to property without the corporate limits are not put down as provided in section 3967 G. C. water service may be refused or if furnished, furnished at a rate in excess of that fixed by the section.

Under the constitutional provision if the water furnished by extension of the mains to persons living outside of the municipality should result in supplying an excess of fifty per cent of the total service furnished the citizens within the municipality, would of necessity, have to be discontinued, notwithstanding the provisions of the section. The fact is that section 3967 G. C. was in effect in practically its present form long prior to the adoption of the constitutional provision herein above referred to.

Sections 3963 and 14769 G. C. are the only statutes I am able to find that provide for water service for which no charge shall be made.

By virtue of the first part of the syllabus in the case of Village of Euclid v. Camp Wise, supra, municipalities are free from the restrictions imposed in said section. The part of the syllabus referred to reads as follows:

"1. By reason of the adoption of Section 4, Article XVIII of the Constitution of 1912, municipalities may acquire, construct, own, lease and operate water works free from any restrictions imposed by section 3969 and 14769 G. C."

In 1917 the General Assembly enacted sections 6602-1 and 6602-105 of the General Code in order to provide a way to secure improved sanitary conditions and to furnish a water supply for fire protection and for other uses to the people living outside the limits of cities and villages. Section 6602-17 G. C. et seq., of this act provides for water works systems to be constructed by the county commissioners in county sanitary districts for sanitary purposes and for fire protection.

Section 6602-18 G. C. provides that:

"The county commissioners may fix reasonable rates to be charged for water, when the source of supply or distributing pipes are owned by the county or district, etc."

Free water for the extinguishing of fires finds no mention in any of the sections of this act. Section 3963 G. C. is intended to apply only to the residents and the property within municipal corporations.

It is manifestly unfair to the residents of the municipality whose taxable property must be assessed to build, equip and maintain a water works system, if the water service thus supplied, or any part thereof, is to be furnished free to those who live without or have property without the limits of said municipality, which property is not taxed or charged with the support and maintenance of the water works system. Property owners outside of municipalities might install mains and fire hydrants at their own expense without taking water for any purpose except in cases of fire and if the water to extinguish fires is to be furnished to them free, they pay nothing to the support of the water works system upon which they depend for this service.

In the opinions of the Attorney General, 1912, vol. 2, page 1977, it is held:

"The purposes for which free water may be supplied to the board of trustees of public affairs having been specified in Section 3963 G. C. and street improvements not being included as one of said purposes, said board has not only the right but is bound in duty, to charge a rental to the council for water used for said purposes."

If this be true for work which is done by council to the streets of the municipality under their authority, even though free water for fire protection is allowed to the municipality, with much greater force of reason it may be said that residents without the corporation or property beyond the limits of the corporation should not be furnished free water even for fire protection.

To compel the citizens and taxpayers of a municipal corporation, which supports a water works system, to furnish free water for fire protection to persons living beyond the limits of the municipality amounts to the taking of their property for public use without compensation which could only be allowed, if allowable at all, upon the theory that it is an exercise of the police power of the state. I do not believe that such exercise of power is permissible and I do not think that section 3967 intends that free water shall be furnished to residents outside of a municipal corporation for any purpose even though they have at their own expense, as provided in said section, extended water mains to their premises and installed fire hydrants.

For the reasons advanced herein you are advised that water consumers outside of a municipality, who have installed at their own expense fire hydrants and water mains connecting with the city water works system under supervision of the proper municipal officials by resolution of council, are not entitled to receive free water for the extinguishment of fires.

It is but prudent to add, apropos this discussion, that no attempt is made to consider and no opinion intended to be expressed as to the validity of section 3967 G. C. as a constitutional statute.

Respectfully,  
C. C. CRABBE,  
*Attorney-General.*