

I am of the opinion that where officials have relied upon the specific advice of the Attorney General in the matter of retaining such fees, a court in equity and good conscience would decline to sustain any finding which you might make against Judge Bell and his associates prior to the issuance of Opinion No. 1295, under date of November 25, 1927. Therefore, I think you should give prospective effect only to Opinion No. 1295.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1775.

MUNICIPAL COURT OF AKRON—DISPOSITION OF COSTS AND FINES
COLLECTED UNDER SECTIONS 1579-536 AND 4599, GENERAL CODE.

SYLLABUS:

1. *In state cases instituted in the Municipal Court of Akron the costs and fines collected, by the terms of Sections 1579-536 and 4599, General Code, are payable to the treasury of the County of Summit by the Clerk of the Municipal Court.*
2. *Opinion No. 1633 reconsidered and corrected.*

COLUMBUS, OHIO, February 28, 1928.

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

GENTLEMEN:—This will acknowledge your letter of recent date which reads:

“In Opinion No. 1633 dated January 30, 1928, Section 1579-536, G. C., relative to the powers and duties of the Clerk of the Municipal Court of Akron, was cited as authority for the conclusion that fees and costs accrued in such court in felony cases should be paid over to the municipal court clerk when collected from the state and should be deposited in the city treasury.

Section 1579-314, G. C., relative to the powers and duties of the Municipal Court of Toledo, before amendment 112 O. L. 219, contained provisions relative to the disposition of costs, fees, fines and penalties which were similar to those found in 1579-536, G. C.

Section 1579-314 was considered by the Attorney General in Opinion No. 576 to be found at page 1026 of his opinions for the year 1919 and the conclusion reached that fines and costs collected by the clerk of the Toledo Municipal Court, in state cases were payable to the county treasury.

QUESTION: Are costs collected by the Clerk of the Municipal Court of Akron in state criminal cases other than felonies, payable into the municipal treasury?”

The several sections of the General Code relating to the Municipal Court of Akron appear as Sections 1579-497 to 1579-549, both inclusive, of the General Code.

Section 1579-508, General Code, defines the criminal jurisdiction of the Municipal Court of Akron and, in so far as pertinent, provides:

"The court shall have jurisdiction * * * of all misdemeanors committed within the limits of Summit County * * * hear and finally determine the same and impose the prescribed penalty. * * *"

Section 1579-517, General Code, reads as follows:

"In all criminal cases and proceedings the practice and procedure and mode of bringing and conducting prosecutions for offenses and the power of the court in relation thereto shall be the same as those which are now or may hereafter be conferred upon police courts."

Section 1579-536, General Code, in so far as pertinent, provides:

"He (the clerk) shall pay over to the proper parties all moneys received by him as clerk, *and shall receive and collect all costs, fees, fines and penalties and, shall pay the same monthly into the treasury of the city of Akron and take a receipt therefor, except as otherwise provided by law*, and except that the provisions of Section 3056 of the General Code respecting payments to the trustees of law library associations of fines and penalties assessed and collected by police courts for offenses and misdemeanors prosecuted in the name of the state shall be applicable to all fines and penalties assessed and collected by the municipal court in like cases, but money deposited as security for cost shall be retained by him pending litigation. * * * *He shall, on and after the first day of January, 1920, supersede and succeed to, and shall have all the powers and perform all the duties of, the clerk of the police court of the city of Akron and of the clerk of the justices' courts of Akron township, Summit County.*" (*Italics the writer's.*)

Section 1579-543, General Code, provides in part as follows:

"The municipal court shall be the successor of the police court of the city of Akron and of the justices of the peace of Akron township, Summit County. * * *"

From the provisions of the foregoing sections it will be observed that the Municipal Court of Akron is the successor of the police court of the City of Akron and of the justices of the peace of Akron Township and that the clerk of the Municipal Court supersedes and succeeds to all the powers and is obliged to perform all the duties of the clerk of the police court of the City of Akron and of the clerk of the justices' courts of Akron Township.

Section 4599, General Code, relates to the duties of clerks of police courts and provides:

"On the first Monday of each month, he (clerk of the police court) shall make, under oath, to the city auditor, a report of all fines, penalties, fees, and costs imposed by the court in city cases, showing in what cases they have been paid, and in what cases they remain unpaid, and, at the same time, he shall make a like report to the county auditor as to state cases. He shall immediately pay into the city and county treasuries, respectively, the amount then collected, or which may have come into his hands, from all sources, during the preceding month."

You refer to a former opinion of this office which appears in Vol. I, Opinions, Attorney General for 1919, at page 1026, the syllabus of which reads as follows:

"1. Under Section 4599, G. C., in state cases the costs and fines collected are properly payable to the county treasurer by the clerk of the Municipal Court of Toledo.

"2. In police courts, or municipal courts, succeeding such police courts, in the absence of specific provision to the contrary, under Section 4599, G. C., the fees and costs imposed and collected by the court in state cases go into the county treasury."

Although this opinion construes sections of the General Code pertaining to the Municipal Court of Toledo, an examination thereof discloses that the language of the sections of the General Code relating to the Municipal Court of Akron, *supra*, is identical in substance with the sections therein construed. In this opinion the following language appears :

"It will be observed that the municipal court succeeds the police court of the City of Toledo, and that the clerk of the municipal court received all the powers and is obliged to perform all the duties of police clerks (among which are those above indicated in Section 4599), and that Section 39, partially quoted above, after specifically providing for the accounting on the part of the clerk to the city for moneys collected in city cases, contemplates other provisions of the law relating to payment of monies collected. This is evidenced by the provision in that section that he shall pay over 'all moneys received by him as clerk * * *, except as otherwise provided by law.'

Section 4599, requiring that such moneys collected in state cases should be paid to the county treasurer, is the exception referred to in Section 39, 'as otherwise provided by law.'

From these considerations it is concluded that in the creation of the Toledo Municipal Court, there is no evidence of a legislative intention to thereby change the well recognized and long established legislative policy of requiring such moneys collected in state cases to be paid into the county treasury. Examination has been made of a number of other municipal court acts and similar provisions are found in each of them, clearly recognizing that the provision for the accounting for and payment of moneys collected in state cases is made in Section 4599. It is to be noted also that by the terms of Section 38, the county pays a part of the salary of the clerk of the municipal court in consideration of the services rendered in state cases.

It is, therefore, the opinion of this department that costs and fees collected in state cases in the Municipal Court of Toledo, Ohio, are properly payable to the county treasury."

I concur in the reasoning and conclusions therein reached.

On January 30, 1928, this office rendered an opinion, being Opinion No. 1633, addressed to you, the syllabus of which reads as follows:

"In felony cases instituted in the Municipal Court of Akron, where the defendant is convicted in the Court of Common Pleas, such fees as accrue in such court should be inserted in the judgment of conviction. Upon payment of the costs of conviction by the state, under the provisions of Section 13727, General Code, the clerk of the Court of Common Pleas, by the terms of Section 3016, General Code, should pay such fees and costs as may have

accrued in the Municipal Court of Akron to the clerk thereof, whose duty it then is to pay the same into the treasury of the city of Akron, as provided by Section 1579-536, General Code."

In this opinion no consideration was given to the provisions of Section 4599, supra. Inasmuch as a state case was there involved and in view of the provisions of Sections 1579-536 and 4599, supra, the syllabus of this opinion is corrected to read as follows:

"In felony cases instituted in the Municipal Court of Akron, where the defendant is convicted in the Court of Common Pleas, such fees as accrue in such court should be inserted in the judgment of conviction. Upon payment of the costs of conviction by the State, under the provisions of Section 13727, General Code, the clerk of the Court of Common Pleas, by the terms of Section 3016, General Code, should pay such fees and costs as may have accrued in the Municipal Court of Akron to the clerk thereof, whose duty it then is to pay the same into the treasury of the County of Summit, as provided by Sections 1579-536 and 4599, General Code."

In view of the foregoing and answering your question specifically, it is my opinion that in state cases instituted in the Municipal Court of Akron the costs and fines collected, by the terms of Sections 1579-536 and 4599, General Code, are payable to the treasury of the County of Summit by the clerk of the Municipal Court.

Respectfully,

EDWARD C. TURNER,

Attorney General.

1776.

TAX LEVIES—HOW PROCEEDS OF LEVIES MADE UNDER FORMER SECTION 1222, GENERAL CODE, MAY BE APPLIED.

SYLLABUS:

The proceeds of tax levies upon the 1927 duplicate made in pursuance of former Section 1222, General Code, must be applied only to the objects set forth in said statute.

COLUMBUS, OHIO, February 28, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your communication as follows:

"We respectfully request your written opinion upon the following:

A tax in accordance with the provisions of Section 1222, G. C., prior to its amendment in 112 O. L. 470, was made upon the 1927 tax duplicate. Section 1222, G. C., at the time the assessment of the tax was determined provided that the proceeds of the levy shall be used solely for the purpose of paying the county's proportion of the cost and expense of the construction, improvement, maintenance and repair of inter-county highways and main market roads or parts thereof in co-operation with the state highway de-