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1. CRIMINAL CASES—PAYMENT OF CERTAIN FUNDS INCIDENT TO PROSECUTION INTO TREASURY OF INCORPORATED CITY OR VILLAGE—“WHEN SUCH CASE IS PROSECUTED”—REFERENCE TO CASE IN MUNICIPAL COURT, MUNICIPALITY WHERE COURT LOCATED—PARTICULAR MUNICIPAL COURT—DEEMED TO BE LOCATED IN MUNICIPALITY WHERE ESTABLISHED—SECTIONS 1183-4, 1581 G. C.
2. COUNTY AUDITOR—DETERMINATION MADE, MAXIMUM AMOUNT TO BE PAID BY CLERK OF MUNICIPAL, POLICE OR MAYOR'S COURT TO TRUSTEES, LAW LIBRARY ASSOCIATION—PAYMENT TO BE MADE FROM FUNDS COLLECTED BY CLERK FROM SOURCES DESIGNATED IN SECTION 3056, FIRST PARAGRAPH, G. C.—PAYMENT ENFORCED.

SYLLABUS:

1. The provision in Section 1183-4, General Code, for the payment of certain funds, accruing as an incident of the prosecution of certain criminal cases, to the treasury of the incorporated city or village “where such case is prosecuted,” refers, in the case of a municipal court, to the municipality in which such municipal court is located. A particular municipal court is deemed to be located in the municipality within which it is established under the provisions of Section 1581, General Code.

2. Where a determination has been made by a county auditor, under the provisions of the second paragraph of Section 3056, General Code, of the maximum amount to be paid by the clerk of a municipal, police, or mayor's court to the trustees of a law library association, such payment is to be made only from funds collected by such clerk from the sources designated in the first paragraph of Section 3056, General Code; and such payment may be enforced only to the extent that such funds have been so collected by such clerk.

Columbus, Ohio, July 16, 1952

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

“RE: Uniform Municipal Court Act.

“The enactment of Amended Senate Bill No. 14, otherwise known as the Uniform Municipal Court Act, has created cer-

tain inequities between municipalities under the existing interpretation of Section 1183-4 of the General Code.

"Your attention is directed to the following opinions of various Attorneys General indicating that moneys collected by municipal and mayor's courts for fines and forfeitures in State Highway Patrol cases shall be paid one-half to the state treasury and one-half to the municipal treasury where such case is prosecuted:

Attorney General's Opinion	No. 2762 of 1934
"	"	No. 4309 of 1935
"	"	No. 713 of 1937
"	"	No. 2108 of 1940

"Since the enactment of Section 1181-5, General Code, now Section 1183-4, municipalities generally, including many villages, have benefited from the distribution of one-half of the moneys collected in State Highway Patrol cases heard in the mayor's court, police court or municipal court of each of the respective municipalities. In many instances the municipality, to a great extent, relies upon this source of revenue to maintain and repair the city or village streets.

"The enactment of Section 1584, General Code, terminating the jurisdiction of mayors and police justices in all state cases when a municipal court is established with jurisdiction over the territory embracing such municipality, has deprived such municipality of certain revenues heretofore received from one-half share of fines in State Highway Patrol cases tried in the mayor's court.

"The state legislature, at the same time, imposed additional financial responsibility upon the municipalities embraced within the jurisdiction of a municipal court by the enactment of Sections 1591 and 1610 of the General Code, requiring each municipality to pay a proportionate share of the municipal court judges' and clerks' compensation based upon population.

"Inasmuch as the violations for which the State Highway Patrol cites various offenders before a municipal court usually occur outside the city where such court is located, and on state highways running through the smaller municipalities, it is believed that some equitable distribution of moneys collected by the municipal court in State Highway Patrol cases should be provided which will permit all the municipalities embraced within a municipal court's territory to share in such revenue.

"Please give consideration to the foregoing and furnish us with your formal opinion in answer to the following questions:

"1. Where a municipal court has jurisdiction over the territory outside the city in which said court is located, and said

territory embraces other municipalities, is there any authority under existing laws governing the disposition of moneys collected by said municipal court from fines and forfeitures in State Highway Patrol cases which permits the payment of any portion of such moneys to the other municipalities on a pro rata basis?

"2. When a county auditor has determined the amount due the County Law Library Association from the various municipal and mayor's courts in a county, under the provisions of Section 3056, General Code, where a municipal court territory embraces other municipalities, how shall the amount allocated a mayor's court be paid?

"Enclosed herewith are two letters received from municipal officers and a copy of one from our examiner in Lake County, which indicate the necessity for your opinion in answer to the questions herein submitted."

With respect to your first question, we may properly note the statutory provisions in Section 1183-4, General Code, relative to the disposition of fines, etc., in cases where the accused is arrested by a state highway patrolman. This section reads as follows:

"All fines collected from, or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen shall be paid one-half into the state treasury and one-half to the treasury of the incorporated city or village—*where such case is prosecuted*. Provided, however, if such prosecution is in a trial court outside of an incorporated city or village such money shall be paid one-half into the county treasury. Such money so paid into the state treasury shall be credited to the 'state highway maintenance and repair fund' and such money so paid into the county, city or village treasury shall be deposited to the same fund and expended in the same manner as is the revenue received from the registration of motor vehicles.

"The trial court shall make remittance of such money as prescribed by law and at the same time as such remittance is made of the state's portion to the state treasury such trial court shall notify the superintendent of the state highway patrol of the case or cases and the amount covered by such remittance.

"All salaries and expenses of members of the state highway patrol and all expenditures for vehicles, equipment, supplies and salaries of clerical forces and all other expenditures for the operation and maintenance of the patrol shall be paid by the treasurer of state out of the state highway maintenance and repair fund."

(Emphasis added.)

The words which I have emphasized in the foregoing section quite plainly refer to the location of the trial court, the word "where" being

defined in Webster's New International Dictionary as "At or in which place."

In my opinion No. 1132 under date of February 8, 1952, I indicated that in a certain limited sense the "A" municipal court, when dealing with a case involving a violation of an ordinance of "B" municipality, is acting therein as an agency of "B" municipality rather than of "A" municipality. This would not be true, of course, where the "A" municipal court is concerned with the trial of a case involving a violation of state law, there being no reason whatever to suppose that in such a case the "A" municipal court is in any sense acting as an agent of "B" municipality. It cannot be supposed, therefore, that in any such instance the "B" municipality is "the incorporated city or village where such case is prosecuted."

I am inclined to the view, therefore, that the language "where such case is prosecuted" has reference solely to the location of the trial court. Such location in the case of a municipal court is pretty clearly indicated by several references thereto in the Municipal Court Act. For example, Section 1581, General Code, reads in part as follows:

"There is hereby established a municipal court in each of the following municipal corporations:

*"Akron, Alliance, Ashland, * * * Xenia, Youngstown, and Zanesville."*
(Emphasis added.)

The emphasized language in the section above clearly indicates that a municipal court is to be located in each of the several cities named therein.

Section 1582, General Code, reads in part as follows:

*"The municipal courts, established by section 1581 of the General Code, shall have jurisdiction within the corporate limits of their respective municipal corporations and shall be courts of record. Each of such courts shall be styled ' . . . municipal court,' inserting the name of the municipal corporation. The following named municipal courts shall also have jurisdiction as herein designated. * * *"*

Here again is a definite indication of the association of a particular municipal court with the municipal corporation in which it is established under the provisions of Section 1581, supra. The expression "their re-

spective municipal corporations" quite evidently refers to the cities named in Section 1581 in which such courts are established. Moreover, the provision as to *additional* territorial jurisdiction clearly indicates that the *primary* territorial jurisdiction of the court is co-extensive of the corporate limits of the municipality in which the court is established and the name of which it bears.

Under the provisions of Section 1583, General Code, the words "legislative authority" are defined as having reference to the most populous city in the territory of the court. With this in mind, we may note that under the provisions of Section 1615, General Code, such legislative authority is required to provide suitable accommodations for the municipal court and its officers. It does not necessarily follow, of course, that the cities named in Section 1581 are in every instance the most populous cities within the territory of the court concerned, but it would appear that the legislature in making this provision proceeded on the assumption that such was the case. Assuming, therefore, that in a particular instance there is no question but that the named municipality in which a municipal court is established under the provisions of Section 1581, *supra*, is the most populous city within the territory of such court, it would clearly appear from an examination of all of these sections that a court is located, at least in a physical sense, in a particular municipality.

That it is so located in a legal sense in a particular municipality rather than in the entire territory in which it exercises jurisdiction is indicated also by the following language in Section 1584, General Code:

"Upon the institution of a municipal court, the jurisdiction of the mayor and the police justice in all civil and criminal causes shall terminate within the *municipality in which such municipal court is located*. All other mayors within the territory may retain such jurisdiction as now provided in all criminal causes involving violation of ordinances of their respective municipalities to be exercised concurrently with the municipal court. * * *"

(Emphasis added.)

Here we have an express reference to the "municipality in which such court is located" and by considering this provision in relation to Sections 1581 and 1582 we are bound to conclude that such municipality is the one in which the municipal court in question is established. Moreover, when this language is followed by reference to "All other mayors within the territory" the General Assembly has clearly made a distinction

between "territory" and "location," it being clear that a particular municipal court is not "located" within its entire territory, but rather that it is located within a particular city within such territory. From this it follows that the distribution of moneys for which provision is made in Section 1183-4, General Code, has reference only to the treasury of the city in which a municipal court is established under the provisions of Section 1581, General Code, and in view of this plain language I am unable to perceive any basis for the supposition that any other municipality could assert a claim to a share of the funds distributed under authority of the statute.

I readily concede that this result, flowing from the enactment of the Municipal Court Act, is a political inequity of some considerable significance and I have little doubt that had this problem been more clearly appreciated at the time this legislation was under consideration, the General Assembly would have made provision for a more equitable distribution of these funds among the several municipal corporations located within the territory of the several municipal courts concerned. However, in the absence of such special provision I am unable to perceive any logical basis of support for a conclusion other than that which I have already indicated.

Your second question is concerned with the provisions of Section 3056, General Code. This section is as follows:

"All monies collected by a municipal corporation, accruing from fines, penalties, forfeited deposits or forfeited bail bonds or forfeited recognizances taken for appearances, by a municipal court, police court or mayor's court for offenses and misdemeanors brought for prosecution in the name of a municipality under a penal ordinance thereof, where there is in force a state statute under which the offense might be prosecuted or prosecuted in the name of the state, except a portion thereof, which plus all costs collected monthly in such state cases, equals the compensation allowed by county commissioners to the judges of the municipal court presiding in police court, clerk and prosecuting attorney of such court in state cases, shall be retained by the clerk of such municipal, police, or mayor's court, and be paid by him forthwith, each month, to the trustees of such law library association in the county in which such municipal corporation is located, but the sum so retained and paid by the clerk of said municipal, police, or mayor's court to the trustees of such law library association shall in no month be less than 25% of the monies arising from such fines, penalties, and forfeited deposits, forfeited bail bonds and forfeited recognizances, taken for appear-

ances, in that month, without deducting the amount of the allowance of the county commissioners to said judge, clerk and prosecutor.

"Provided, however, that the total amount paid hereunder in any one calendar year by the clerks of all municipal, police and mayor's courts in any one county to the trustees of such law library association shall in no event exceed \$7,500.00 and the maximum amount paid by any one of such courts shall in no event exceed \$3,000.00 in any one calendar year. The maximum amount to be paid hereunder by each such clerk shall be determined by the county auditor in December of each year, for the next succeeding calendar year, and shall bear the same ratio to \$7,500.00 as the total fines, costs and forfeitures received by the corresponding municipality, bear to the total fines, costs and forfeitures received by all the municipalities in the county, as shown for the last complete year of actual receipts, on the latest available budgets of such municipalities, and payments in the full amounts hereinbefore provided shall be made monthly by each clerk in each calendar year until the maximum amount for such year shall have been paid. When such amount, so determined by the auditor, shall have been paid to the trustees of such law library association, then no further payments shall be required thereunder in that calendar year from the clerk of such court."

For reasons which I shall note hereinafter, it should first be pointed out that the moneys collected as fines, etc., to which reference is made in the first paragraph of this section, are limited to such moneys as are collected in cases "where there is in force a state statute under which the offense might be prosecuted, or prosecuted in the name of the state."

It must be admitted that the first paragraph of this section is something less than a model of grammatical precision. For example, it consists of one long and involved "sentence," consisting of a subject, the word "monies," followed by numerous modifying phrases and clauses, and is entirely lacking of a predicate. Stripped down to essential parts, this paragraph reads:

"All monies collected by a municipal corporation from fines, penalties (etc.) * * * except a portion thereof * * * shall be retained by the clerk * * * and be paid by him forthwith * * * to the trustees of such law library association * * *"

Despite this obvious grammatical defect the legislative intent thus expressed presents little difficulty. It seems clear that the General Assembly intended to provide that a portion (determined according to a

stated formula) of all moneys collected by a municipal corporation from fines, etc., should be paid to the trustees of the local county law library association.

In coming to the second paragraph of this section, we find provision for a determination by the county auditor of each municipality's share of the law library budget, such determination for a particular year to be computed according to a stated formula based in part on the total receipts of such municipality from fines, costs and forfeitures "for the last complete year of actual receipts."

The difficulty which gives rise to your second question relates to the determination and payment under this formula in the case of certain municipal corporations within a municipal court's territory other than the most populous city therein. In making such determination for the calendar year 1952, it is clear that the receipts of such municipal corporation from fines, etc., for the year 1951, or a prior year, will necessarily be used. However, it is by no means clear that such "other municipal corporations" will collect monies by way of fines, etc., from the operation of their mayors' courts in an amount sufficient, in the year 1952, to equal the amount thus determined by the county auditor to be due the law library association. This possibility will be seen in the provision in Section 1584, hereinbefore quoted, terminating the jurisdiction of the mayor and police justice within the municipality in which the municipal court is located, and limiting the jurisdiction of all other mayors within such court's territory.

Here it will be observed that such mayors' courts will exercise no jurisdiction whatever in cases prosecuted under state statutes and that the revenues formerly accruing from such prosecutions have become nil, since the Municipal Court Act became effective. Moreover, in certain material submitted with your request I note a statement, with respect to the "X" Municipal Court, that the mayors of the municipal corporations within the court's territory, other than the most populous city therein, intend "to have all ordinance and state cases prosecuted in the Municipal Court." In the event this is done it is plain that such other municipal corporations would themselves collect no funds whatever from the sources and in the manner designated in the first paragraph of Section 3056, supra. In such case, the question is whether such municipal corporation is required to pay to the law library association the amount of

its share of the association's budget as determined by the county auditor according to the formula set out in the second paragraph of Section 3056.

In State ex rel Library Association v. Kempf, Clerk, 51 Ohio App., 452, the headnote is as follows:

"A petition in mandamus seeking to recover from a clerk of court, under authority of Section 3056, General Code, *money received from fines and penalties assessed for certain offenses* is subject to demurrer where it does not allege that the clerk has in his hands the sum claimed, or any part thereof."

(Emphasis added.)

In the course of the opinion by Hamilton, J., it is said (pp. 453, 454):

"There is no allegation in the petition that the clerk has in his hands the sum of \$3,841.75, *theretofore collected*. It may be he has no part of the sum sought to be ordered paid over.

"In the absence of an allegation that the clerk has in his hands the sum of money claimed, or any part thereof, the demurrer to the petition will have to be sustained.

"Whether or not the clerk is personally liable for the failure to pay the money over is not before the court."

(Emphasis added.)

While this decision does not categorically so hold, there is found, both in the syllabus and in the opinion, a very definite suggestion that the funds sought to be paid over were limited to "money received from fines and penalties assessed for certain offenses," and that the amount sought to be paid was only such as had been "theretofore collected" from such sources.

Moreover, when Section 3056, supra, is considered in its entirety, it is necessary to conclude, in my opinion, that the provision in the second paragraph for an allocation and payment of funds relates solely to the funds described in the first paragraph of this section, and that there is apparently no legislative intent to require such payment where funds from the designated sources are not available by reason of the fact that no such funds have been collected.

Respectfully,

C. WILLIAM O'NEILL

Attorney General