

2108.

MONIES—FINES—PENALTIES—COLLECTED: BY COMMON PLEAS COURT—MUNICIPAL OR MAYOR'S COURT—VIOLATIONS: LIQUOR CONTROL ACT: STATE TRAFFIC LAWS—SECTIONS 3056, 3056-3, 6064-59 G. C.—DISTRIBUTION OUTLINED AS TO PARTICULAR FACTS: ALL TO COUNTY TREASURY; ONE-HALF TO STATE; ONE-HALF TO COUNTY TREASURY; WHEN FIFTY PER CENT RECEIVED BY COUNTY TREASURER SHOULD BE PAID MONTHLY TO COUNTY LAW LIBRARY ASSOCIATION—EXCEPTION—WHEN ARREST MADE BY STATE HIGHWAY PATROLMAN—STATUS: PROSECUTIONS IN NAME OF MUNICIPALITY UNDER PENAL ORDINANCE—STATE STATUTE.

SYLLABUS:

1. *Monies collected by a Common Pleas Court for violations of the Liquor Control Act should be distributed as provided in Section 6064-59, General Code, one-half to the state and one-half to the county treasuries. Fifty per cent of the monies so received by the county treasurer should be paid monthly to the trustees of the county law library association in accord with the provisions and limitations of Section 3056-3, General Code.*

2. *All monies collected by a Common Pleas Court for violations of state traffic laws, except when the arrest was made by a state highway patrolman, and fifty per cent of the monies collected by said court for violation of state traffic laws when the arrest was made by a state highway patrolman, shall be deposited in the county treasury and by the county treasurer paid monthly to the trustees of the county law library association as provided in Section 3056-3, General Code.*

3. *Monies collected by a municipal or mayor's court for violations of the Liquor Control Act should be distributed, as provided in Section 6064-59, General Code, one-half to the state and one-half to the county treasuries. Fifty per cent of the monies so received by the county treasurer should be paid monthly to the trustees of the county law library association in accord with the provisions and limitations of Section 3056-3, General Code.*

4. *Monies collected by a municipal or mayor's court for violations of state traffic laws, except when the arrest was made by a state highway patrolman, shall be deposited into the county treasury and by the county treasurer paid monthly to the trustees of the county law library association as provided in Section 3056-3, General Code. Those monies collected by such courts for violations of state traffic laws when the arrest was made by a state highway patrolman shall be paid one-half into the state treasury and one-half into the treasury of the incorporated city or village where such case was prosecuted.*

5. *All fines resulting from a prosecution in the name of a municipality under a penal ordinance thereof dealing with liquor control or traffic (except when the arrest was made by a state highway patrolman) where there is in force a state statute under which the offense might be prosecuted shall be distributed to the trustees of the county law library association as provided in Section 3056, General Code.*

Columbus, Ohio, March 29, 1940.

Hon. Ellis W. Kerr, Prosecuting Attorney,
Troy, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion on the following:

"Section 3056-2 provides for the Clerk of Courts paying monthly to the Law Library Association *all monies* arising from fines, etc.

Section 3056-3 provides for County Treasurer paying to the Law Library Association fifty per cent of all monies arising from fines, etc., in *any* court under the liquor control act and the state traffic laws.

Section 6064-59 provides that money from fines under the liquor control act shall be paid one-half to the state and one-half into the treasury of the county.

Your 1939 Opinion 1063 remarks about the apparent conflict between 3056-3 and 6064-59 but goes on to say that under 3056-3 the duty to pay fifty per cent rests with the Treasurer who receives only fifty per cent and can therefore pay only one-fourth of the total monies collected to the Law Library Trustees.

Your opinion is desired as to whether or not the Clerk of Common Pleas Court should pay *all monies* from fines to the Law Library Trustees as provided in 3056-2, including liquor and traffic cases or should the Clerk still pay fifty per cent into the state treasury under liquor cases and if so should the remaining fifty per cent be paid to the Law Library Association or should this remaining fifty per cent be paid to the County Treasurer for him to distribute in accordance with the terms of 3056-3?

There is no provision that the Clerk of Courts pay any money to the County Treasurer but if the words 'in any court' in 3056-3 mean to include the Common Pleas Court the inference is that in such liquor cases to money should go to the County Treasurer, especially in view of the remarks made in your Opinion 1063 above referred to.

In traffic cases (except where arrest is made by the State Highway Patrol) should the Clerk of Common Pleas Court pay all fines to the Law Library Association or should this money be paid into the county treasury to be distributed as provided by 3056-3?

Should the clerk of a municipal court or of a mayor's court still pay fifty per cent of liquor fines into the state and if so should the remaining fifty per cent be paid to the treasurer of a municipality to be distributed as provided in Section 3056-3 or should the said remaining fifty per cent be retained and a minimum of twenty-five per cent of such fifty per cent paid to the Law Library Association as provided in Section 3056?

Likewise, in traffic cases should the clerk of a municipal court or of a mayor's court pay a minimum of twenty-five per cent of such fines to the Law Library Association or should fifty per cent of said fines be paid to the treasurer of a municipality to distribute as provided in Section 3056-3 and if the latter, how should the clerk of said municipal court or mayor's court distribute the fifty per cent which he retains?"

Your first and second questions are concerned with the disposition of monies arising from fines and penalties levied and from cash deposits, bail bonds and recognizances taken by the Common Pleas Court of a county which have become forfeited on account of offenses and misdemeanors brought for prosecution in the name of the state by the clerk of such court, especially with reference to those monies collected by virtue of offenses committed in violation of the Liquor Control Act and state traffic laws.

Section 3056-2, General Code, to which you refer in your communication, provides as follows:

“In each county of the state all monies arising from fines and penalties levied, and from cash deposits, bail bonds and recognizances taken by the common pleas and probate courts of such county, which have become forfeited, on account of offenses and misdemeanors brought for prosecution in such courts in the name of the state, shall be retained and paid monthly by the clerk of such courts to the trustees of such law library associations, but the total sums so paid therefrom shall not exceed \$1,250.00 per annum, and when that amount shall have been paid to the trustees of such law Library association, in accordance with the provisions of this section then no further payments shall be required thereunder in that calendar year from the clerks of such respective courts.”

By virtue of that section, the clerk of the Court of Common Pleas is required to retain and pay monthly to the trustees of the county law library association all monies arising from fines, etc., subject to the limitation therein set forth (see Opinions of the Attorney General for 1940, No. 1788). Clearly this language includes monies arising from fines, etc. under the Liquor Control Act and state traffic laws. However, the disposition of the latter types of fines, etc. is provided for in Section 3056-3, General Code, as follows:

“In each county, 50% of all monies arising from fines, penalties, forfeited deposits and forfeited bail bonds and recognizances taken for appearances on account of offenses brought for prosecution in any court in such county, under the liquor control act, and the state traffic laws or any amendment or modification of said acts, shall be paid monthly by the treasurer of such county or municipality to the trustees of the law library association in such county, but the sum so paid to such trustees by each respective treasurer under the provision of this section shall not exceed \$1,200.00 per annum, under the liquor control act, 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 payments shall be required thereunder in that calendar year from such respective treasurers.”

An examination of the two sections above quoted, which are in pari materia, readily reveals a conflict in so far as the two relate to the disposition of fines, etc. arising out of violations of the Liquor Control Act and state traffic laws. In such case resort must be made to the rule of statutory construction to the effect that a special statute prevails over one general in nature. In sup-

port of that rule, I direct your attention to the case of State, ex rel. Myers vs. The Industrial Commission, 105 O. S. 103, the syllabus of which reads in part as follows:

“1. The different sections and parts of sections of the same legislative enactment should if possible be so interpreted as to harmonize and give effect to each and all, but if there is an irreconcilable conflict the later in position should prevail.

2. The special provisions in any legislative enactment must prevail over general provisions.”

See also 37 O. J. 409.

Section 3056-2, supra, deals with all monies arising from fines, etc. on account of offenses and misdemeanors brought for prosecution in the name of the state. Section 3056-3, supra, is concerned only with that portion of such fines arising under the Liquor Control Act and state traffic laws. That being the case, it would follow that the disposition of monies arising from fines, etc. collected by reason of prosecutions under the Liquor Control Act and the state traffic laws should be made in accordance with Section 3056-3, supra, which requires distribution by the county treasurer to the trustees of the county law library association. In ordinary state traffic cases the full amount of such fines, etc. collected by the Common Pleas Court is deposited with the county treasurer and he would, therefore, be in a position to transmit fifty per cent of such fines monthly to the trustees of the law library association. Fines, etc. resulting from violations of state traffic laws where arrests are made by state highway patrolmen are distributed in accord with Section 1181-5, General Code, which provides in part 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 may be 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.”

In connection therewith, I direct your attention to Opinion No. 402 of the Opinions of the Attorney General for 1939, the syllabus of which reads as follows:

“Under the provisions of section 1181-5, General Code, all fines collected from, or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen and tried in a Court of Common Pleas, shall be paid one-half to the state treasury and one-half into the county treasury.”

The distribution of fines, etc. under the Liquor Control Act is governed by Section 6064-59, General Code, which reads as follows:

“Money arising from fines and forfeited bonds collected under any of the penal laws of this state relating to the manufacture, importation, transportation, distribution or sale of beer or intoxicating liquor shall be paid one-half into the state treasury to the credit of the general revenue fund therein and one-half into the treasury of the county where the prosecution is held.”

From the foregoing it would appear that in the cases of violations of the Liquor Control Act and state traffic laws when arrests are made by state highway patrolmen arising in a Common Pleas Court, the county treasurer would receive only fifty per cent of such monies and would then be required to transmit fifty per cent of the monies he has received, i. e., one-fourth of the total fines to the trustees of the law library association, as provided in Section 3056-3, *supra*. (See Opinions of the Attorney General for 1939, No. 1063).

In view of the foregoing and in specific answer to your first question, I am of the opinion that monies collected by a Common Pleas Court for violations of the Liquor Control Act should be distributed as provided in Section 6064-59, General Code, one-half to the state and one-half to the county treasuries. Fifty per cent of the monies so received by the county treasurer should be paid monthly to the trustees of the county law library association in accordance with the provisions and limitations of Section 3056-3, General Code.

In answer to your second inquiry, it is my opinion that all monies collected by a Common Pleas Court for violations of state traffic laws, except when the arrest was made by a state highway patrolman, and fifty per cent

of the monies collected by said court for violation of state traffic laws when the arrest was made by a state highway patrolman, shall be deposited in the county treasury and by the county treasurer paid monthly to the trustees of the county law library association as provided in Section 3056-3, General Code.

Your third question is concerned with the disposition by municipal and mayor's courts of fines, etc. arising out of prosecutions under the Liquor Control Act.

As explained in Opinion No. 1063, Opinions of the Attorney General for 1939, page 1501, the disposition of such monies is controlled by Section 6064-59, *supra*. By the force of that section, it is the duty of the municipal and mayor's courts to pay one-half of the monies in question to the state and the remaining one-half to the treasury of the county where the prosecution is held. Your attention is directed to the fact that under the provisions of Section 3056-3, *supra*, distribution is made to the law library association by the treasurer of the political subdivision and not by the clerks of the courts in question. It would follow, therefore, that the clerk of a municipal or mayor's court is required to distribute fines, etc. collected under the Liquor Control Act in accordance with Section 6064-59, *supra*, which, as I have pointed out in Opinion No. 1063, Opinions of the Attorney General for 1939, would result in one-fourth thereof passing on to the trustees of the law library association, subject to the maximum limitation contained in Section 3056-3, *supra*.

In specific answer to your third question, I am, therefore, of the opinion that monies collected by a municipal or mayor's court for violations of the Liquor Control Act should be distributed, as provided in Section 6064-59, *supra*, one-half to the state and one-half to the county treasuries. Fifty per cent of the monies so received by the county treasurer shall be paid monthly to the trustees of the county law library association in accord with the provisions and limitations of Section 3056-3, General Code.

We come now to your final question relative to the disposition of fines, etc. by a municipal or mayor's court arising under violations of state traffic laws.

In Opinion No. 1063, Opinions of the Attorney General for 1939, page 1501, I held that such fines, etc., except those monies arising from fines collected and bonds forfeited by persons apprehended or arrested by state highway patrolmen for violations of state traffic laws, irrespective of the court

imposing same, shall be distributed by the treasurer of the political subdivision as provided in Section 3056-3, supra. Those fines arising by virtue of arrests by state highway patrolmen are distributed in accordance with Section 1181-5, supra, i.e., one-half into the state treasury and one-half into the treasury of the incorporated city or village where such case may be prosecuted. Neither section imposes any duty on a clerk of courts with respect to law library associations. The monies realized by reason of violations of ordinary state traffic cases are payable in whole to the county treasurer and by him distributed to county law library associations as set forth in Section 3056-3, supra.

Answering your fourth question specifically, I am of the opinion that monies collected by a municipal or mayor's court for violations of state traffic laws, except when the arrest was made by a state highway patrolman, shall be deposited into the county treasury and by the county treasurer paid monthly to the trustees of the county law library association as provided in Section 3056-3, General Code. Those monies collected by such courts for violations of state traffic laws when the arrest was made by a state highway patrolman shall be paid one-half into the state treasury and one-half into the treasury of the incorporated city or village where such case was prosecuted.

In connection with your third and fourth questions, I might add that in the event a fine results from a prosecution in the name of the municipality under a penal ordinance thereof dealing with liquor control or traffic (except where the arrest was made by a state highway patrolman) where there is in force a state statute under which the offense might be prosecuted the money so collected should be distributed in accordance with the provisions of Section 3056, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.