

should establish a schedule of fees similar in amounts to those prescribed by Senate Bill No. 14, there could be no conflict between the provisions of the two sections. On the other hand it is equally apparent that any schedule of fees adopted by the municipal court which provides for fees and costs differing in amount from those prescribed by said Senate Bill No. 14 must necessarily be in conflict with the terms of this latter enactment and in such an event and to such an extent the provisions of section 1579-47, permissive of the adoption of a fee schedule by such municipal court must be repealed by the latter statute, since Senate Bill No. 14 makes no provision for the optional fixing of a fee schedule by the municipal court, but clearly and specifically provides for the fees and costs to be taxed by municipal courts in criminal proceedings, the section concluding with the specific repeal of all sections or parts of sections in the special acts establishing such municipal courts which may be in conflict with the table of fees and costs therein provided.

It would seem then upon such considerations that an affirmative answer should be given to both of the questions propounded by your inquiry, since it is believed that the fees and costs in criminal proceedings in the municipal courts of Cleveland are now fixed by the provisions of Senate Bill 14, 109 O. L., p. 12, together with those of sections 1746, 3014, 3014-1, 3347 and 12375 of the General Code.

Respectfully,

JOHN G. PRICE,
Attorney-General.

3272.

VILLAGES—SECTION 4219 G. C. SHOULD BE ADHERED TO BY VILLAGE COUNCILS IN FIXING COMPENSATION OF EMPLOYES UNDER SECTION 17 OF MILLER BILL (109 O. L. 4).

Section 4219 G. C. should be adhered to by village councils in fixing compensation of employes under section 17 of the Miller bill (109 O. L. 4):

COLUMBUS, OHIO, June 27, 1922.

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

GENTLEMEN:—Your recent communication reads:

“On March 1, 1922, you advised this department by letter that:

‘In my letter to your bureau dated January 24, 1922, the authority to set aside funds was discussed at some length. It was further indicated that section 4214 would be applicable to employments made by the city in pursuance of the provisions of section 17 of the Miller bill. Inasmuch as the provisions of sections 4214 and 4219 are very similar it is believed that the compensation must be fixed by council before a proper employment can be made of said section 17.’

On March 6, 1922, you advised this department by letter as follows:

‘In reply to your second inquiry as to whether attorneys, secret service officers and detectives can be paid a percentage of fines, it is believed that the manner in which payment is to be made is left to the discretion of council. It might provide a regular salary for the payment of such officers or a per diem compensation for the time actually employed, or if it chooses, it no doubt could fix a percentage basis.’

Acting in accordance with the views expressed by you, it has been held by this department that all compensation paid attorneys, detectives and secret service officers authorized by section 17 of the Miller bill must be fixed by ordinance of council under the provisions of section 4214 and 4219 G. C., and that such compensation may be a salary, a per diem or a per cent of the amount collected which the city would be lawfully entitled to as its proportion of Crabbe act fines.

On June 21, 1921, the village of Milford passed ordinance No. 340, copy of which is attached to enclosed data, providing that:

'Ten per cent of all moneys hereafter paid into the treasury of the village of Milford, Ohio, received from fines collected under statutes of the state of Ohio prohibiting the liquor traffic shall constitute a separate fund to be called the Secret Service Fund.

That such fund shall be used for hiring attorneys, detectives, secret service officers and costs to secure the enforcement and prosecution of said laws prohibiting the liquor traffic.'

On January 3, 1922, the council of said village of Milford passed the following resolution:

'To employ legal counsel to secure the enforcement of laws prohibiting the liquor traffic and to take care of all expenses incidental thereto.

Whereas under section 17 of an act of the General Assembly of the state of Ohio designated and known as amended Senate Bill 17, passed February 2, 1921, and approved by the governor of said state on February 9, 1921, the council of the village of Milford, Ohio, has enacted an ordinance whereby 50 per cent of the shares belonging to said village derived from fines collected under any of the statutes of the state of Ohio, prohibiting the liquor traffic, shall constitute a separate fund to be called the Secret Service fund for the purpose of hiring attorneys, detectives, secret service officers and other necessary expenses to secure the enforcement of the prohibiting laws.

And whereas under the law council of the village of Milford, Ohio, may direct the disposition of said secret service fund:

Therefore be it resolved by this council, that said fund so derived, be expended by the mayor of this village upon itemized statements rendered for legal help and expenses payable upon order signed by said mayor and the clerk and treasurer of the village of Milford, Ohio.

That resolution dated August 2, 1921, entitled "A resolution to employ a legal counsel to secure the enforcement of laws prohibiting the liquor traffic, be and the same is hereby repealed."

Passed and adopted by council January 3, A. D. 1922.'

It is contended by this bureau that the ordinance and resolution above quoted do not fix the compensation for attorneys, detectives and secret service officers as provided by sections 4214 and 4219 G. C., and payment made for such services under such ordinance and resolution has been held by this department to be illegal.

Exception to our position has been taken by legal counsel for the village of Milford as per the enclosed brief. It being contended by said counsel that section 17 of the Miller act is not limited by section 4219 of the General Code of Ohio for the reason that the Miller act is a later enactment and should be liberally construed to carry out the provisions thereof.

We earnestly request an early consideration of the facts submitted as we have recently completed an examination of the affairs of said village,

and the clerk thereof, in view of our position, has refused payment of legal and detective services claimed under the ordinance and resolution as above set forth."

As stated in your communication, this department has advised by letter that it is necessary for councils of villages to comply with the provisions of section 4219 G. C. in fixing the compensation to be received by persons employed to enforce prohibition under section 17 of the Miller bill. An examination has been made of the able brief submitted by counsel attempting to sustain the legality of the ordinance authorizing the mayor to expend moneys set aside under the authority of said Miller bill. His chief contention is based upon the proposition that the Miller bill is the later enactment and therefore repeals section 4219 by implication. In considering this argument it must be kept in mind that there is a long line of decisions by the Supreme Court of Ohio to the effect that repeals by implication are not favored, and no such holding will be made unless it is impossible to reconcile or harmonize the two provisions.

Section 4219 is a statute of general application governing councils of villages in the exercise of their official duties, and provides:

"Sec. 4219. Council shall fix the compensation and bonds of all officers, clerks and employes in the village government, except as otherwise provided by law. All bonds shall be made with sureties subject to the approval of the mayor. The compensation so fixed shall not be increased or diminished during the term for which any officer, clerk or employe may have been elected or appointed. Members of council may receive as compensation the sum of two dollars for each meeting, not to exceed twenty-four meetings in any one year."

In the passing of the Miller bill there is nothing to indicate it was the intention of the legislature that council was to depart from its path as marked out by existing law in fixing compensation for the employes of the village. Section 17 of said Miller bill simply opens to the village a new source of funds, and authorizes the employment of additional officers or employes to be paid from said fund in the event council chooses to take advantage of said law. In the expenditure of public funds it is a well established principle of Ohio law that all doubts in reference to the legality of a certain expenditure must be resolved against such authority.

It is the purpose of section 4219 to place the responsibility for the payment of salaries and compensation with council rather than to leave it to the judgment of some other official, and no valid reason can be seen why this should not apply to the employments made under the provisions of the Miller bill. It is believed that the fair assumption as to the intent of the legislature in the enactment of the Miller bill is that council, after having authorized the use of the fund, should by ordinance provide for the expenditure and should fix the compensation to be received by such employes. This view completely harmonizes the two provisions of the law and in nowise handicaps the enforcement of said law. In fact, by properly safeguarding such expenditures, in the end it will no doubt in many instances be a distinct advantage in that it will conserve said fund to authorized uses.

In view of the foregoing you are advised that it is the opinion of this department that the previous advice given to your bureau upon this subject should be adhered to.

Respectfully,
JOHN G. PRICE,
Attorney-General.