

5360.

APPROVAL—FORM OF EASEMENT IN CONNECTION WITH  
SECURING RIGHT-OF-WAY, ETC.

COLUMBUS, OHIO, April 14, 1936.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR: Under date of April 9, 1936, you submitted form of easement designed to secure title without expense of surveys in connection with securing right-of-way for the five thousand additional miles of county and township roads to be added to the state system.

After consideration thereof, it is my opinion that the said easement is in proper legal form and the same is hereby approved as to form and returned herewith.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

5361.

SHERIFF—SCIOTO COUNTY—MUST SERVE WARRANTS IS-  
SUED BY PORTSMOUTH MUNICIPAL COURT IN STATE  
CASES—STATUTORY FEES OF SHERIFF PAID INTO  
COUNTY TREASURY.

## SYLLABUS:

*The Municipal Court of Portsmouth may require the sheriff of Scioto County to serve warrants where the offense charged is a violation of the laws of the state. The sheriff serving such processes is entitled to the statutory fees for such services, which are to be paid by the clerk of the Municipal Court of Portsmouth, when collected, into the treasury of Scioto County. Opinion No. 4647, rendered September 11, 1935, discussed and followed.*

COLUMBUS, OHIO, April 15, 1936.

HON. EMORY F. SMITH, *Prosecuting Attorney, Scioto County, Ports-  
mouth, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads as follows:

“On the 11th day of September, 1935 your office rendered opinion No. 4647, which opinion had been requested by our office. The syllabus of this opinion reads:

‘The Municipal Court of Portsmouth may require the sheriff of Scioto County to serve warrants where the offense charged is a violation of the laws of the state.

The sheriff serving such processes is entitled to the statutory fees for such services, which are to be paid into the county treasury.’

General Code Section 1579-483 of the Municipal Court Act of the City of Portsmouth, in our opinion, does not require costs on state cases to be paid into the county treasury and as a matter of practice costs which have been collected in state cases in the Municipal Court have been paid into the city treasury and not into the county treasury. Consequently, the sheriff of our county serves numerous warrants and receives no costs.

The question we wish to submit to your office is whether or not under General Code section 1579-483 the costs in state cases should be paid into the county treasury or into the city treasury. If it is your opinion that the costs under General Code section 1579-483 are not required to be paid into the county treasury, would it still be your opinion that it is the duty of the sheriff to serve warrants issued by the Municipal Court in state cases, when there is no other legal way in which he can collect costs?

We would also like to have your opinion as to whether or not it is the duty of the sheriff to serve subpoenas from the Municipal Court in state cases.

These matters are of immediate importance to our office and we would appreciate your rendering an opinion as soon as possible.”

Your inquiry is prompted by the fact that under the holding of my opinion No. 4647, rendered September 11, 1935, the Municipal Court of Portsmouth may require the sheriff of Scioto County to serve warrants where the offense charged is a violation of state law.

In your communication you imply that there is no authority for the clerk of the Municipal Court to pay into the county treasury the fees earned by the sheriff for serving such processes. However, you will notice that the last part of the syllabus of the above opinion specifically states that “the sheriff serving such processes is entitled to the statutory fees for such services, which are to be paid into the county treasury”. In a subsequent communication you inquire whether or not this language was inserted in the opinion through inadvertence due to the fact that there is no express authority in Section 1579-483 for the clerk of the Municipal



tence to the penitentiary are paid by the State, should such fee, when collected by the clerk of the municipal court be paid into the county treasury or into the city treasury; and when such fees are collected by the clerk of court from the State, should they be paid into the county treasury or into the city treasury?

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In reference to your second question, relative to whether the fees shall be paid into the county or into the city treasury, I call your attention to a former opinion, No. 859, rendered May 22, 1933. In that opinion, I stated the rule as follows:

'Whether or not the county should receive the fees in the event the sheriff has served such processes, depends upon the authority of the sheriff to serve them.'

Section 2845, General Code, reads in part as follows:

'For the services hereinafter specified when rendered, the sheriff shall charge the following fees, and no more, which the court or clerk thereof shall tax in the bill of costs against the judgment debtor or those legally liable therefor: \* \* \* When any of the foregoing services are rendered by an officer or employe, whose salary or per diem compensation is paid by the county, the legal fees provided for such service in this section shall be taxed in the costs in the case and when collected shall be paid into the general fund of the county.'

Section 1579-798, General Code, relating to the duties of the clerk of the Municipal Court of Marion, reads in part as follows:

'He shall collect all fines, costs and penalties. He shall be the receiver of all moneys payable into his office and on request shall pay them to persons entitled thereto. On the first business day of each calendar month he shall pay to the treasurer of the city of Marion to the credit of the municipal court fund, all moneys collected by his office for official services; and to the credit of the general fund, all fines collected for violation of city ordinances.

He shall on the first day of each month in each year, pay to the county treasurer all fines collected for the violation of state laws.'

From a reading of the above section of the Marion Municipal Court Act, there is nothing which would prevent the clerk

of the Municipal Court of Marion from paying these fees into the county treasury. Hence, the question of whether the fees are collected by the clerk of the Municipal Court of Marion or by the clerk of courts of the county is immaterial.

It is therefore my opinion, in specific answer to your second question, that the sheriff serving such processes is entitled to the statutory fees for such services which are to be paid into the county treasury."

An examination of Section 1579-798, General Code, quoted above, which is the pertinent section of the Marion Municipal Court Act, clearly shows that it is the same as Section 1579-483, General Code, *supra*, of the Portsmouth Municipal Court Act in so far as it pertains to your question. Consequently, the 1935 opinion affirmed the above quoted principles in the 1933 opinion. Thus, it would seem that where the sheriff serves a warrant directed from the Municipal Court of Portsmouth in a state case, the sheriff would be entitled to the statutory fees when the same are collected, which fees the clerk of the Municipal Court of Portsmouth should pay into the treasury of Scioto County. The same principle would also be true where the sheriff is required to serve subpoenas in state cases.

In view of the above and without extending this discussion, it is my opinion, in specific answer to your inquiry, that the Municipal Court of Portsmouth may require the sheriff of Scioto County to serve warrants where the offense charged is a violation of the laws of the state. The sheriff serving such processes is entitled to the statutory fees for such services, which are to be paid by the clerk of the Municipal Court of Portsmouth, when collected, into the treasury of Scioto County.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

5362.

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APPROVAL—BONDS OF CITY OF PORTSMOUTH, SCIOTO  
COUNTY, OHIO, \$155,700.00.

COLUMBUS, OHIO, April 15, 1936.

*Industrial Commission of Ohio, Columbus, Ohio.*