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CLERKS—COMMON PLEAS AND PROBATE COURTS—EACH COUNTY—REQUIRED TO PAY TO TRUSTEES OF LAW LIBRARY ASSOCIATION OF COUNTY MAXIMUM SUM OF \$1250.00 PER ANNUM—APPLICATION IS TO PAYMENTS OF EACH CLERK, NOT TO AGGREGATE CONTRIBUTIONS—OPINION 1788, OAG 1940, PAGE 116, OVERRULED—SECTION 3056-2 GC, SECTION 3375.52 RC.

SYLLABUS:

Under the provisions of Section 3056-2 General Code, Section 3375.52 Revised Code, the clerks of the common pleas and probate courts, respectively, of each county, are required to pay to the trustees of the law library association of the county from the sources therein set forth, up to a maximum sum of \$1250.00 per annum, and such maximum sum applies to the payments of each of said clerks and not to their aggregate contributions. Opinion No. 1788, Opinions of the Attorney General for 1940, page 116, overruled.

Columbus, Ohio, September 15, 1953

Hon. Stanley N. Husted, Prosecuting Attorney
Clark County, Springfield, Ohio

Dear Sir:

I have before me your communication, requesting my opinion and reading as follows:

“The Board of Trustees of the Clark County Law Library have requested me to ask you for your opinion on the interpretation which is to be given Section 3056-2 of the General Code of Ohio, relative to the amount of monies which is to be paid over to the Library Trustees by the clerks of the Probate Court and Common Pleas Court. The specific question is this:

“Is Section 3056-2 of the General Code of Ohio to be interpreted to mean that the clerks of the Common Pleas Court and the Probate Court shall pay over to the trustees of the law library a sum not to exceed \$1,250.00 each, or whether the clerks of each of these courts should pay combined sums not to exceed \$1,250.00?

“Some months ago, I rendered an opinion to the Clerk of the Common Pleas Court of Clark County, Ohio, and held that *each* of the clerks of the two courts, under the provisions of Section 3056-2 of the General Code of Ohio, should pay over sums not to exceed \$1,250.00.

“There is a recent Common Pleas Court decision on the question which I have propounded to you, and it is the case of Van Wert County Law Library Association v. Stuckey, 42 O. O., 1. There has been an earlier opinion given on this question by a former Attorney General in 1940, and it is to be found in the 1940 Opinions of the Attorney General, No. 1788.”

It will be helpful, I believe, in arriving at the correct interpretation of Section 3056-2 General Code, to trace briefly the history of this legislation and to note the changes. Section 3056 General Code, originally provided for certain payments by police courts to the county law library association. That section was amended on several occasions, but it was not until the amendment in 1910, 101 Ohio Laws, 295, that a duty was placed on the clerk of the probate and common pleas courts to contribute directly to the support of such organization. By that amendment, there was incorporated in said Section 3056 the following language:

“* * * In all counties the fines and penalties assessed and collected by the common pleas court and probate court for offenses and misdemeanors prosecuted in the name of the state, shall be retained and paid quarterly by the *clerk of such courts* to the trustees of such library association, but the *sum* so paid from the fines and penalties assessed and collected by the common pleas and probate courts shall not exceed five hundred per annum. The moneys so paid shall be expended in the purchase of law books and the maintenance of such association.”

Said Section 3056 was further amended in 1929 and 1930, but the above quoted language was not changed in any particular. In 1939, 118 Ohio Laws, 453, the section was divided and what is now Section 3056-2 was taken out and set up as an independent provision. Section 3056, after providing for certain contributions by the clerks of all the municipal, police and mayors' courts in the county, reads as follows:

“* * * 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 for-

feitures 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."

Section 3056-2, General Code, reads 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 \$1250.00 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.*" (Emphasis added.)

I would call particular attention to two changes that were made in the former reading, relative to the contribution by the clerks of the court of common pleas and the probate court. First, the word "sum", in the former act was changed to "total sums." Secondly, the word "respective" was inserted. For better comparison I quote again the pertinent portions of the old and new statutes: Section 3056 provided:

"* * * but the *sum* so paid from the fines and penalties assessed and collected by the common pleas and probate courts shall not exceed five hundred dollars per annum."

Section 3056-2, reads in part:

"* * * but the *total sums* so paid therefrom shall not exceed \$1250.00 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.*" (Emphasis added.)

Under the language of the original section, it could have been possible to conclude that the legislative intent was to group the two courts together and apply the maximum of \$500 to the combined contribution of both

courts. The use of the word "sum" would seem to suggest that a total contribution by the clerk of both courts was the measure to be applied. When the legislature reenacted these provisions in their present form and stated that when the "total sums" of \$1250.00 per annum had been paid to the Association "then no further payments shall be required thereunder in the calendar year from the clerks of such respective courts," it appears to me that the legislature recognized that in the cumulative contributions by two independent courts, two distinct sums of \$1250.00 would be reached, and intended that the contribution up to the maximum named by each of the respective clerks would relieve them from further obligation.

The word "respective" has been defined by the Standard Dictionary as meaning "singularly and severally considered." As defined by Webster the word means: "As relating to each." Both of these definitions have been adopted by numerous courts, including our own. *Weeks v. Thompson*, 66 Ohio App., 1, 12; *Wartic v. Miller*, 48 Ohio App., 494, 505; *Wolf v. Ry. Co.*, 55 Ohio St., 517.

It is my opinion that the legislature meant to make it clear that the obligation of each court and each clerk was to be "singularly and severally considered."

It appears to be clear that the statute in its present form was enacted for the purpose of requiring the payment up to \$1250.00 by the clerk of each of the two courts named. If it were the legislative intention to make this obligation a joint one, it is obvious that confusion would result because there is no means provided by the law for allocating to each of these courts the portion which it should contribute. The proceeds from fines, forfeitures, etc., in one court might be greatly in excess of those arising in the other, and they might vary greatly from month to month.

An examination of the present provisions of Section 3056, General Code, which I have quoted, will, I believe, greatly strengthen my conclusions on this subject. There, a number of municipal courts, police and mayor's courts are involved and the statute provides that the combined contributions from all of them are not to exceed \$7500.00. Accordingly, the statute goes on to provide that the amount to be contributed by each such court in any year is to be determined by the county auditor, in advance, based upon the total received by all the municipalities in the county during the last year of actual receipts. I am convinced that if the legislature had

intended to place the clerks of the common pleas and probate courts in the position of joint contributors up to the stated maximum, it would have made some similar provision with reference to their contributions. In this connection, it must be kept in mind that the two sections, in their present form, were part of the same act.

As indicated by your letter, we have two opinions on this subject which are contrary to each other. The first is Opinion No. 1788, Opinions of the Attorney General for 1940, page 116, wherein it was held:

“Under the provisions of Section 3056-2, General Code, the clerks of the common pleas and probate courts together shall contribute to the trustees of the county law library association not to exceed \$1250.00 per annum out of the moneys arising from fines and penalties levied, and from cash deposits, bail bonds and recognizances taken by said courts, which have become forfeited, on account of offenses and misdemeanors brought for prosecution in such courts in the name of the state.”

In that opinion the then Attorney General discussed the change in the reading of the statute from “sum” to “total sums” but he brushed it aside and did not comment upon the possible effect of the word “respective.”

In the case of *Van Wert Law Library Association v. Stuckey*, 42 Ohio Opinions, 1, decided in 1949, the precise question here before us, together with a considerable list of other questions relating to the general subject was submitted to the Common Pleas Court of Van Wert County. Judge McNeil, passing on the question, held as indicated by paragraph 11 of the headnotes:

“Under Section 3056-2, General Code, the probate court of each county must pay yearly up to \$1250 to the county law library association from monies arising from violations of the criminal laws, and the clerk of the court of common pleas must likewise pay up to \$1250.00.”

In the body of the opinion the court dealing with this question said:

“15. G. C. §3056-2 provides that the probate court of each county shall pay yearly up to \$1250.00 to a county law library association from monies arising from violations of the criminal laws, and in addition, the clerk of the court of common pleas shall likewise pay up to \$1250.00 to such law library association from monies arising from violations of the criminal laws. Such payments should be made directly to such law library association and not to the county treasurer.”

While the decision of the common pleas court is perhaps not binding except in the county where rendered, I feel that it is the correct conclusion and that I must accordingly overrule the opinion of my predecessor above referred to. Accordingly, in specific answer to your question you are advised that under the provisions of Section 3056-2, General Code, Section 3375.52 Revised Code, the clerks of the common pleas and probate courts, respectively, of each county are required to pay to the trustees of the law library association of the county from the sources therein set forth, up to a maximum sum of \$1250.00 per annum, and that such maximum sum applies to the payments of each of said clerks and not to their aggregate contributions. (Opinion No. 1788, Opinions of the Attorney General for 1940, page 116, overruled.)

Respectfully,

C. WILLIAM O'NEILL
Attorney General