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CLERK OF A MUNICIPAL COURT HAS THE DUTY TO RETAIN FINES AND PENALTIES AND PAY THEM TO THE TRUSTEES OF A COUNTY LAW LIBRARY. COUNTIES WITH POPULATIONS OF LESS THAN 50,000 HAVE A \$4,000. PER YEAR MAXIMUM—§3375.50, R.C., OPINION 1114, OAG, 1960.

SYLLABUS:

1. Under Section 3375.50, Revised Code, the clerk of a municipal court has a duty to retain the specific fines and penalties, etc., described therein, and to pay them monthly to the board of trustees of the county law library association, regardless of the fact that the county auditor has not set the maximum amount which could be so paid in that year.

2. In a county of less than 50,000 population, and having one municipal court, the maximum amount that should be paid to the law library association in any one year is \$4,000.

Columbus, Ohio, December 26, 1962

Hon. James W. Freeman, Prosecuting Attorney  
Coshocton County, Coshocton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Coshocton County has within its boundaries one Municipal Court in the City of Coshocton with county wide jurisdiction. It

appears that in December, 1961, the County Auditor overlooked determining the certifying to the Clerk of the Municipal Court of Coshocton the maximum amount to be paid by such clerk to the Trustees of the Coshocton County Law Library Association under the provisions of R.C. 3375.50.

“Inasmuch as the provisions of the first paragraph of that section appear to be mandatory, directing that all monies collected from specified fines and penalties, forfeited deposits, bail bonds and recognizances *shall* be retained by the Clerk of such Municipal Court and *be paid* by him forthwith each month to the Board of Trustees of the Law Library Association in the county in which such Municipal corporation is located, it is contended by the Coshocton County Law Library Association that the failure of the County Auditor to make the determination in December, 1961, does not excuse the Clerk of the Municipal Court from making the payments directed.

“Inasmuch as there could be no determination by the County Auditor in Coshocton County that the maximum amount to be paid by such Court would be more or less than \$4000.00, the determination appears to be purely formal.

“Can the Clerk of the Municipal Court of Coshocton refuse to pay to the Coshocton County Library Association any funds for the year 1962 because of failure of the County Auditor to make the determination mentioned.”

Section 3375.50, Revised Code, referred to in your letter, reads in part:

*“All moneys collected by a municipal corporation accruing from fines and penalties and from forfeited deposits, forfeited bail bonds, and forfeited recognizances taken for appearances, by a municipal court for offenses and misdemeanors brought for prosecution in the name of a municipal corporation 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 of such moneys, which plus all costs collected monthly in such state cases, equal the compensation allowed by the board of 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 court, and be paid by him forthwith, each month, to the board of trustees of the law library association in the county in which such municipal corporation is located. The sum so retained and paid by the clerk of said municipal court to the board of trustees of such law library association shall in no month be less than twenty-five per cent of the moneys arising from such fines and penalties and from forfeited de-*

posits, bail bonds, and recognizances taken from appearances, in that month, without deducting the amount of the allowance of the board of county commissioners to said judge, clerk, and prosecuting attorney.

“The total amount paid under this section in any one calendar year by the clerks of all municipal courts in any one county to the board of trustees of such law library association shall in no event exceed the following amounts :

“(A) In counties having a population of fifty thousand or less, based on the last federal census, seventy-five hundred dollars and the maximum amount paid by any of such courts shall not exceed four thousand dollars in any calendar year.

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“(D) In counties having a population of in excess of one hundred fifty thousand, according to the last federal census, fifteen thousand dollars in any calendar year. The maximum amount to be paid by each such clerk shall be determined by the county auditor in December of the year 1959 and in December of each succeeding year for the next succeeding calendar year, and shall bear the same ratio to the total amount payable under this section from the clerks of all municipal courts in such county as the total fines, costs, and forfeitures received by the corresponding municipal court, bear to the total fines, costs, and forfeitures received by all the municipal courts in the county, as shown for the last complete year of actual receipts, on the latest available budgets of such municipal courts; and payments in the full amounts provided in this section shall be made monthly by each clerk in each calendar year until the maximum amount for such year has been paid. When such amount, so determined by the auditor, has been paid to the board of trustees of such law library association, then no further payments shall be required in that calendar year from the clerk of such court.”

(Emphasis added)

In my Opinion No. 1114, Opinions of the Attorney General for 1960, page 57, I held in the first paragraph of the syllabus as follows :

“1. The last two sentences of division (D) of Section 3375.50, Revised Code, relating to the determination by the county auditor of the maximum amount to be paid by each municipal court clerk to the county law library association, apply to divisions (A), (B), (C), and (D) of said section, and the maximum amount to be paid by each municipal court clerk under said section shall be determined by the county auditor regardless of the population of the particular county concerned.”

Under Section 3375.50, *supra*, the clerk of the Coshocton Municipal Court had a duty to retain the specified fines and penalties, etc., and to pay them each month to the board of trustees of the law library. It is true that the county auditor has a duty to set the yearly maximum that can be paid to the law library, but there is no requirement that the maximum must first be set in order to impose a duty on the clerk to retain the fines, etc., and to pay them to the law library. The clerk's duty is there regardless of the action or inaction of the auditor.

In this regard, it would seem that since the clerk has the duty to make the payments, he would be the one most interested in knowing the maximum which should be paid, and if in this instance the clerk had made payments in excess of the maximum, I would certainly feel that amounts in excess of the maximum should be refunded by the law library association.

As you state in your letter, since the population of Coshocton County is 50,000 or less, the determination of the auditor would necessarily have been that the maximum to be paid in the year 1962 should be \$4,000.

Thus, if the clerk did retain fines, etc., in accordance with Section 3375.50, *supra*, I am of the opinion that he now has a duty to pay any amounts so retained, to a maximum of \$4,000, to the board of trustees of the law library association, regardless of the fact that the county auditor did not, in 1961, determine the maximum which could be paid.

If the clerk did not retain said fines, etc., then, of course, another question is presented, as he would have no funds to pay over. The only remedy of the law library association in such a situation would appear to be to follow the funds and attempt to collect from the payee.

In conclusion, it is my opinion and you are advised :

1. Under Section 3375.50, Revised Code, the clerk of a municipal court has a duty to retain the specific fines and penalties, etc., described therein, and to pay them monthly to the board of trustees of the county law library association, regardless of the fact that the county auditor has not set the maximum amount which could be so paid in that year.

2. In a county of less than 50,000 population, and having one municipal court, the maximum amount that should be paid to the law library association in any one year is \$4,000.

Respectfully,  
MARK McELROY  
Attorney General