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FEES — PAYABLE TO PROBATE COURT FROM COUNTY TREASURY — PROVISIONS, SECTION 10501-43 G. C. MANDATORY AS TO FEES ENUMERATED — SUCH FEES MUST BE RECEIVED BY PROBATE COURT NOTWITHSTANDING PROVISIONS, SECTION 2983 G. C., WHICH IS A GENERAL STATUTE.

SYLLABUS:

The provisions of section 10501-43, General Code, which is a specific statute, with respect to the payment of the fees therein enumerated to the probate court from the county treasury are mandatory and such fees must be received by the probate court notwithstanding the provisions of section 2983, General Code, which is a general statute.

Columbus, Ohio, Aug. 2, 1944

Hon. James W. Darby, Prosecuting Attorney
McArthur, Ohio

Dear Sir:

This will acknowledge receipt of your letter of recent date, wherein you request my opinion on the question of whether or not probate and

juvenile judges are required to collect from the county treasurers of their respective counties, the fees provided for in section 10501-43 of the General Code.

The 83rd General Assembly, in 108 Ohio Laws, part 2, page 1216, enacted section 2978, General Code, which reads as follows:

“Each probate judge, auditor, treasurer, clerk of courts, sheriff, surveyor and recorder shall charge and collect the fees, costs, percentages, allowances and compensation allowed by law, and shall give to the person making payment thereof an official receipt in manner and form as may be prescribed by the bureau of inspection and supervision of public offices.”

At the same time it also enacted section 2983, General Code, which reads as follows:

“On the first business day of each month, and at the end of his term of office, each of such officers shall pay into the county treasury, to the credit of the general county fund, on the warrant of the county auditor, all fees, costs, penalties, percentages, allowances and perquisites of whatever kind collected by his office during the preceding month or part thereof for official services, provided that none of such officers shall collect any fees from the county; and he shall also at the end of each calendar year, make and file a sworn statement with the county commissioners of all fees, costs, penalties, percentages, allowances and perquisites of whatever kind which have been due in his office, and unpaid for more than one year prior to the date such statement is required to be made.”

Attention is directed to the proviso of section 2983, which reads as follows:

“* * * provided that none of such officers shall collect any fees from the county * * *.”

Section 10501-43, General Code, was enacted by the 89th General Assembly (114 O. L. 320, 332), and provides that:

“The fees enumerated in this section shall be paid to the probate court out of the county treasury upon the warrant of the county auditor which shall issue upon the certificate of the probate judge and shall be in full for all services rendered in the respective proceedings.”

Then follows an enumeration of fees not pertinent to your inquiry.

It is apparent that the determination of the question involves a comparison of these statutes.

Section 10501-43, General Code, provides in substance that fees for hearings of mental incompetents and juvenile delinquents "shall be paid to the probate court out of the county treasury upon warrant, etc."

Section 2983, General Code, provides in substance that on the first business day of each month and at the end of his term of office, each officer, which includes the probate judge as specified in section 2978, General Code, shall pay into the county treasury all fees, costs, etc. As pointed out above, this statute contains the following proviso:

"* * * that none of such officers shall collect any fees from the county * * *".

It will be observed that section 10501-43, General Code, provides that fees shall be paid to the probate court out of the county treasury. and section 2983, General Code, states that "none of such officers shall collect any fees from the county" after the same have been paid into the county treasury.

In the case of *Dallman v. Campbell, et al.*, 56 Ohio App. 88, the court stated on page 90 as follows:

"One rule of statutory construction applicable to these two sections is that a statute relating to a specific subject controls a general statute which includes the specific subject in the generality of its terms. *Glassell Development Co. v. Citizens National Bank of Los Angeles*, 191 Cal., 375, 216 P., 1012, 28 A. L. R., 1427; 25 Ruling Case Law, 920. Of course the applicability of this rule is not dependent in any way on the time of the enactment of such statutes. *State v. Preston*, 103 Ore., 651, 206 P., 304, 23 A. L. R., 414. * * *

Another rule is that the later statute expresses the intent of the Legislature in the event of conflict with a prior statute.

Of course there is no occasion for invoking the rule unless there is an inconsistency or conflict between the specific statute and the general statute."

There can be no doubt that section 10501-43, General Code, is a

special statute and comes within this rule.

The conflict of these two statutes is apparent. The probate court could not comply with the provisions of both sections. An attempt to comply with either section would produce a result in opposition to the terms of the other.

In accordance with the rules established in the Dallman case, supra, section 10501-43, General Code, takes precedence over the general statute, section 2983, General Code. There can be no question that the language of section 10501-43, General Code, is mandatory; therefore, it follows that a compliance therewith is imperative.

In specific answer to your inquiry, it is my opinion that the provisions of section 10501-43, General Code, which is a specific statute, with respect to the payment of the fees therein enumerated to the probate court from the county treasury are mandatory and such fees must be received by the probate court notwithstanding the provisions of section 2983, General Code, which is a general statute.

Respectfully,

THOMAS J. HERBERT
Attorney General