

3858.

ZANESVILLE CHARTER—PROVISIONS OF CHARTER INSUFFICIENT TO CLOTHE MUNICIPAL COURT WITH JURISDICTION IN STATE CASES—FINES AND COSTS OF SAID COURT PAID INTO CITY TREASURY—WHERE FINES UNDER CRABBE ACT PAID—PAYMENT FROM COUNTY TREASURY OF ADDITIONAL SALARY FOR JUDGE UNAUTHORIZED.

1. *The provisions of section 215 of the charter of the city of Zanesville, Ohio, are insufficient to clothe the municipal court with jurisdiction in state cases, since such courts are created under the provisions of section 1, Article IV of the Constitution of Ohio, rather than under Article XVIII of said Constitution.*

2. *Fines and costs assessed and collected in state cases by the municipal court of Zanesville, should be paid into the city treasury in compliance with the provisions of subsection 25 of section 1579-354 of the General Code.*

3. *Fines assessed and collected by said municipal court of Zanesville, for violations of Crabbe Act, (section 6212-13 et seq. of the General Code) are required by the provisions of section 6212-19 G. C. to be paid one-half into city treasury, and one-half into state treasury.*

4. *Payment from the county treasury of the sum of \$250.00 to the judge of the municipal court of Zanesville, as an additional salary for services rendered as municipal judge, is unauthorized by law.*

COLUMBUS, OHIO, January 4, 1923.

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

GENTLEMEN:—Receipt is acknowledged of your recent communication which reads as follows:

“Sections 212 to 225 inclusive of the Charter of the City of Zanesville, Muskingum county, Ohio, seek to establish and create a municipal court in said city and to provide a method of judicial procedure and other regulations. Said charter was adopted on November 2nd, 1915, and became effective January 1st, 1918.

Senate Bill No. 90 passed by the Legislature on March 21, 1917, (107 O. L. 722), was ‘An act to establish a municipal court for the city of Zanesville, Muskingum County, Ohio, and fix the jurisdiction thereof; provide for a judge thereof and other necessary officers and define their duties, and to repeal sections 14732 and 14733 of the General Code relative to the police court of the City of Zanesville.’

Some difference exists between the city charter provisions and those of the act of the legislature relative to the disposition of fines, fees and forfeitures collected by the clerk of this court. Section 1579-354 G. C., provides in part that:

'The clerk shall pay over to the proper parties all moneys received by him as clerk; and shall pay the same quarterly to the treasurer of the city of Zanesville and take his receipt therefor, etc.'

Section 215 of the charter provides in part that:

'All fines prescribed as a penalty for the commission of any offense and the costs assessed whether in said municipal court or in any other court of record to which such offender may be bound and in which he is finally tried shall be paid into the city treasury to the credit of such fund as may be directed by the city council.'

At the present time fines and costs collected in ordinance cases are deposited in the city treasury while fines and costs collected in state cases are paid to the law library association, less \$700.00 which is paid to the county treasurer to cover the allowance the county makes per annum for the salary of the judge, \$250.00, clerk, \$250.00, and prosecuting attorney, \$200.00. Another difference existing between the charter and the legislative provision relates to the appointment of the clerk of said municipal court; the charter provision (section 218) is that the clerk of this court shall be chosen by the mayor, while the legislative act (section 1579-353 G. C.), provides that the clerk of the municipal court shall be chosen and shall receive such compensation payable out of the treasury of the city of Zanesville as the city council may prescribe, etc.

The duly elected judge of this court under presumed authority of section 1579-353 G. C., appointed a clerk of said court and at about the same time the mayor under authority of section 218 of the charter appointed another party to the same office. This conflict led to litigation and in case of the State of Ohio ex rel. Silas W. Bradshaw vs. Walter R. Culbertson, 30 O. C. A. 117, the court held that:

'Where a city charter supplemented by an act of the General Assembly created and constitutes a municipal court, such court is not a constitutional but rather a statutory court and authority to appoint its clerk is fixed in such appointing officer or board as is prescribed by the city charter and not in the appointing officer or board prescribed by the supplementary statute.'

Question 1. In view of the principle laid down by the court in the above case and in view of section 215 of the Zanesville charter and section 1579-354 of the General Code, should fines and costs collected by this court for violation of statute be paid into the city treasury or be distributed to the law library association and county treasury in the manner described?

Question 2. If it is held that the charter provisions of section 1579-354 of the General Code, is it mandatory that the whole of all fines assessed and collected by this municipal court for violation of Crabbe Act be paid into the city treasury in view of section 6212-19 G. C., which provides that moneys arising from fines and forfeited bonds shall be paid one-half into the state treasury, etc.?

Section 1579-331 G. C., provides that the judge of the municipal court of Zanesville shall receive a salary of \$1800.00 per annum, payable in monthly installments out of the treasury of the city of Zanesville. Section 215 of the charter of said city provides in part that the said judge of the municipal court shall receive a salary of \$1800.00 per year, payable quarterly out of the city treasury on the order of the auditor and that he shall not be entitled to receive any further compensation of any kind whatsoever excepting such salary.

At the present time the judge of the municipal court of the city of Zanesville receives a salary of \$1800.00 from the city treasury as provided by statute and charter and in addition thereto an allowance from the treasury of Muskingum county of \$250.00 per annum.

Question 3. In view of the provisions of the statute and charter, may the judge of the municipal court of Zanesville, Ohio, legally be paid \$250.00 per annum from the county treasury in addition to the \$1800.00 per annum from the city treasury?"

Pertinent to your questions sections 212, and 213 of the charter of the city of Zanesville provide for the creation of the municipal court of said city. Section 212 of said charter reads:

"Sec. 212. There is hereby created and established a municipal court of the city of Zanesville, and the offices of the Judge and Clerk of said court. Said court shall be styled the 'Municipal Court' and shall be a court of record."

Section 213 of said charter also provides:

"Sec. 213. The municipal court shall have and exercise jurisdiction within the limits of the city of Zanesville Ohio, in all actions and proceedings of which justices of the peace have or may be given jurisdiction; and in all actions and proceedings of which the police court of the city of Zanesville now has or may have jurisdiction, and such other jurisdiction in civil and criminal matters and actions as may be hereafter conferred upon said court by the council of the city of Zanesville, and the General Assembly of the State of Ohio. It shall have further jurisdiction in all criminal cases as is now or may be conferred upon mayors' courts, police courts, or other similar courts, and as an examining court to try persons accused of the commission of any felony or other crime or misdemeanor under the laws of the state of Ohio. It shall have jurisdiction also to compel the attendance of witnesses, the enforcement and collection of its own judgments, and such jurisdiction coextensive with the county, as is now exercised by justices of the peace, or may be hereafter conferred upon them."

It is noted that section 213, of the city charter quoted supra, authorizes said municipal court to exercise jurisdiction within the city of Zanesville, Ohio, in all actions and proceedings of which justices of the peace have, or may be given jurisdiction. It is also apparent that the section seeks to confer upon said court such

jurisdiction in all criminal cases "as is now or may be conferred upon mayors courts, police courts, or other similar courts, and to have jurisdiction coextensive with the county as is now exercised by justices of the peace, or may hereafter be conferred upon them." It would seem obvious from the language employed, that the city charter attempts to confer upon said municipal court the powers and jurisdiction of such a court as is authorized under Article IV of the Constitution of Ohio, and if it be true that a municipality has the power to create such courts under authority of section 3 of Article XVIII of the Constitution, it would follow that the power to create courts generally is not limited to the authority of the General Assembly as provided by section 1 of Article IV of said constitution of Ohio. However, it is not believed that a municipality is empowered under section 3 of Article XVIII to create courts with judicial powers and jurisdiction extending to state cases. On the contrary it is believed that such courts may only be established and created by the General Assembly in conformity to the provisions of section 1, Article IV of the Constitution of Ohio. In support of this conclusion may be cited a former opinion of this department, to wit, opinion No. 215, Opinions of the Attorney General, volume 1, 1919, page 372, wherein it was held that the power to establish a municipal court having the judicial powers and jurisdiction of mayors, is vested in the General Assembly by Article IV of the Constitution, and not in municipalities under Article XVIII. In reference to the power of Home Rule Charter Cities to establish courts, the following excerpt is made from the body of the opinion cited:

"The general assembly in numerous instances after the adoption of the home rule amendment, and apparently in the exercise of the authority conferred by sections 1 and 15 of article IV, has established municipal courts in charter cities, but the question whether article XVIII has conferred such power either exclusively or concurrently or at all upon home rule charter cities has not, so far as I have been able to ascertain, been authoritatively decided by any court. There are, however, judicial expressions in some of the supreme court decisions, apparently concurred or acquiesced in by all the judges, to the effect that article XVIII has no application whatever to the judicial organization of the state. Thus, in *State vs. Yeatman*, 89 O. S., 44, in which the constitutionality of the acts enlarging the jurisdiction of the municipal courts of Cincinnati and Dayton were involved, Judge Shauck, at pages 47 and 48, said: The provisions of article XVIII as amended have no relation to the judicial organization of the state, but only to the government of municipalities.' And in *Hesse* case 93 O. S., 230, also involving the validity of a certain section of the act establishing the municipal court of Cincinnati, the court was characterized as a statutory court only."

In the case of the State of Ohio, *ex rel. Silas W. Bradshaw vs. Walter Culbertson* mentioned in your inquiry it is to be noted that the syllabus of the courts opinion is as follows:

"Where a city charter, supplemented by an act of the General Assembly, creates and constitutes a municipal court, such court is not constitutional but rather a statutory court, and authority to appoint its clerk is vested in such appointing officer or board as is prescribed by the city char-

ter, and not in the appointing officer or board prescribed by the supplementary statute."

It may be noted that the opinion of the Attorney General and the court decision cited, are in harmony in respect to the question of the creation of constitutional courts, although the latter would seem to go farther in holding that under the provisions of section 3 of Article XVIII, a charter court may be established with authority and jurisdiction limited to the exercise of the "powers of local self government." Applying therefore, the courts conclusion in this respect, to the matter under consideration, it would seem to follow that the municipal court of Zanesville, insofar as created by charter, is purely a charter court, and its jurisdiction is obviously limited to matters pertaining to local self government. Hence it is concluded that the city charter in question falls short in creating a court that is empowered to exercise jurisdiction in state cases.

It is believed however, that the jurisdiction of said municipal court is supplemented by the provisions of Senate Bill No. 90, (107 O. L., p. 722), section 3 of which provides, that said municipal court shall have the same jurisdiction in criminal matters as heretofore had by the police court of Zanesville and any justice of the peace. Section 10 of said act also provides that in all criminal proceedings the practice and procedure and mode of bringing and conducting prosecutions for offenses, and the powers of the court in relation thereto, shall be the same as those which are now or may hereafter be possessed by police courts or the mayor in municipalities.

It would seem then to be concluded that the jurisdiction of the municipal court of Zanesville, insofar as state cases are concerned, is conferred upon said court by provision of statute rather than by terms of the city charter. Hence it is thought to follow that disposition of fines in state cases assessed and collected by such court, should be in conformity with the general provisions of the statutes which confer upon said municipal court jurisdiction in the instance.

In specific answer then to your first question it is believed that the fines and costs assessed and collected by such municipal court for violations of statute, should be in conformity to the provisions of subsection 25 of section 1579-354, of the General Code, be paid quarterly to the treasurer of the city of Zanesville, Ohio.

Since conclusion has been reached, that the provisions of the city charter relative to the disbursements of fines and costs collected by the municipal court in cases involving violation of statute, do not take precedence over similar statutory provisions, for the reasons assigned, it would follow from the same process of reasoning, that fines assessed and collected by said municipal court for violations of the Crabbe Act, as indicated in your second question, should be paid one-half into the city treasury and one-half into the state treasury as provided by section 6212-19 of the General Code.

Relative to your third question, it is to be noted that the terms of the statute and charter alike provide that the salary of the municipal judge shall be \$1800.00 per annum, payable in monthly installments from the city treasury, and since complete harmony prevails in this respect, it is unnecessary to consider either the one or the other as controlling, for the reason that upon the authority of the statute or charter, either or both, produce the same result, to-wit, the \$1800.00 per annum as the salary of the said municipal judge.

While it is true that section 4568 G. C., provides that the judge of the police court, shall receive such annual compensation, not to exceed \$2000.00, as council may prescribe, and such further compensation payable from the county treasury

as the county commissioners may designate by resolution, yet such compensation is thought to be strictly limited to that covering the salary provided for the judge of the police court, and although the jurisdiction of police courts has been vested in the municipal court of Zanesville, by section 1579 G. C. yet there is no provision of law authorizing the judge of the municipal court to receive the compensation allowed by the county commissioners to police judges under this section.

It is concluded therefore, that the salary or compensation of the judge of the municipal court of Zanesville as provided by law is \$1800.00 per annum, and payment of additional salary in the sum of \$250.00 per annum from the funds of the county treasury is unauthorized by law.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3859.

RECREATION CENTERS—POWER TO LEASE LANDS AND ACQUIRE BUILDINGS FOR SAID PURPOSE—VESTED IN CITY, VILLAGE OR COUNTY COMMISSIONERS—BOARD OF RECREATION UNAUTHORIZED TO LEVY TAXES—SCHOOL LANDS MAY NOT BE EQUIPPED FOR SAID PURPOSES UNDER SECTION 4065-1 G. C.—LIMITATION ON TAX LEVY.

1. *The power to lease lands and acquire buildings for recreation purposes under sections 4065-1 et seq. of the General Code, is vested in the council of the city or village, or in the county commissioners.*

2. *Under Section 4065-3 G. C., a board of recreation is unauthorized to levy taxes or appropriate money for the purposes of said act.*

3. *Under the provisions of sections 4065-1 et seq., of the General Code public or private school lands may not be equipped by the city for the recreation purposes defined by said section.*

4. *The amount of money which can be raised by a tax levy, for the purpose mentioned in section 4065-7 G. C., is subject to the general tax limitations prescribed by law.*

COLUMBUS, OHIO, January 4, 1923.

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

GENTLEMEN:—Receipt is acknowledged of your recent request, which is as follows:

“We respectfully request your written opinion upon questions submitted to us by your Mr. J. C. Daugherty, City Solicitor, Coshocton, Ohio, upon the creation of a Recreation Board and the extent of its powers and duties, as follows: