

2793.

FEES—MAYOR OF VILLAGE—ENTITLED TO IN STATE CASES—
ORDINANCE CASES PAYABLE TO VILLAGE TREASURY.

SYLLABUS:

Mayors of villages in the trial of state cases are entitled to the legal fees taxed in their favor. In ordinance cases they are required to pay all fees collected by them into the treasury of the municipality on the first Monday of each month.

COLUMBUS, OHIO, October 29, 1928.

HON. CARL Z. GARLAND, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR:—This will acknowledge receipt of your inquiry as follows:

“I would like to have your opinion upon the following question:

Can mayors of villages, in the trial of misdemeanor cases and violations of village ordinances, retain for their own use, costs assessed against the defendants in such cases, or are they compelled to turn the costs into such channels as provided by law? And does the mayor, in such cases receive that part of the costs taxed as mayor's costs for their individual use, or are such costs to be turned over to the village?”

Section 4270, General Code, as amended by the 87th General Assembly, 112 O. L., page 141, reads as follows:

“All fines and forfeitures in ordinance cases and all fees collected by the mayor, or which in any manner come into his hands, due such mayor or to a marshal, chief of police or other officer of the municipality and any other fees and expenses which have been advanced out of the municipal treasury, and all money received by such mayor for the use of the municipality, shall be by him paid into the treasury of the municipality on the first Monday of each month. At the first regular meeting of council in each and every month, he shall submit a full statement of all money received, from whom and for what purposes received and when paid into the treasury. Except as otherwise provided by law, all fines and forfeitures collected by him in state cases together with all fees and expenses collected, which have been advanced out of the county treasury, shall be by him paid over to the county treasury on the first business day of each month.”

Your attention is directed to two former opinions of this department, being Opinion No. 1645, rendered under date of February 1, 1928, to the Bureau of Inspection and Supervision of Public Offices, and Opinion No. 2049, rendered under date of May 2, 1928, to the Bureau of Inspection and Supervision of Public Offices, in which the above statute was considered in the light of the questions raised by your inquiry. Copies of said opinions are enclosed herewith.

In Opinion No. 1645 it was held:

“Section 4270, General Code, as amended by the 87th General Assembly, requires the mayor of a municipality, whether a city or village, to pay all fees collected by him in ordinance cases and due him as such mayor, or to a marshal, chief of police or other officer of the municipality, into the treasury of the municipality on the first Monday of each month.”

In Opinion No. 2049 it was held:

"In all state cases, by the terms of Section 4270, General Code, the mayor of a city or village is entitled to hold the legal fees taxed in his favor."

I am, therefore, of the opinion in specific answer to your question that a mayor of a village in the trial of cases based on the violation of a state statute is entitled to the legal fees taxed in his favor and may retain those fees for his individual use. In ordinance cases he is required to pay all fees collected by him into the treasury of the municipality on the first Monday of each month.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2794.

CANAL LANDS—LEASE OF SAME.

SYLLABUS:

A lease of a portion of the Miami and Erie canal lands, lying within the limits of a village and as to which property such village has made application to lease, cannot be surrendered and a new lease executed under the provisions of House Bill No. 162 of the 86th General Assembly (111 O. L. 208), where the property covered by the lease was not, prior to January 1, 1925, improved by the construction of railway tracks thereon, or by the erection of substantial buildings thereon, other than buildings erected for use of gasoline or oil filling stations.

COLUMBUS, OHIO, October 29, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, as follows:

"By lease dated August 6, 1915, the State of Ohio, by John I. Miller, Superintendent of Public Works of Ohio, and duly approved by the Governor and Attorney General, leased to The Ohio Electric Railway Company, of Cincinnati, Ohio, a right-of-way for a single track electric railway over that portion of the outer slope of the towing path embankment of the Miami and Erie Canal, in the Village of Miamisburg, Montgomery County, commencing at a point in the outer slope of said towing path embankment 250 feet north of the north corporation-line of said village and extending thence south over and along the outer slope of said towing path embankment a distance of 8550 feet.

By restriction No. 10 in the lease, it was mutually agreed between the parties of the first and second parts that the electric railway company should construct its road bed upon the lands leased, lay its tracks thereon and have its cars operating regularly over the same on or before the 10th day of July, 1918, but if the party of the second part shall fail to comply fully with this provision, then and in that event this lease shall automatically expire on the 10th day of July, 1918, and said second party shall immediately vacate said premises and yield possession thereof to the Superintendent of Public Works or his authorized agent without contest.'