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1. LAW LIBRARY ASSOCIATION, TRUSTEES OF — PAYMENTS, UNDER SECTION 3056 G. C. MADE BY CLERK OF MUNICIPAL COURT, NOT TO BE REDUCED OR AFFECTED BY RECEIPT OR POSSESSION OF MONEYS OBTAINED FROM GIFTS OR OTHER SOURCES INDEPENDENT OF THOSE RECEIVED PURSUANT TO TERMS OF SECTIONS 3056, 3056-1, 3056-2, 3056-3 G. C.
2. SURPLUS REQUIRED TO BE REFUNDED, SECTION 3058 G. C., SOLELY ARISES FROM MONEYS RECEIVED UNDER SECTION 3056 ET SEQ., G. C.
3. MUNICIPALITY LEGALLY LIABLE FOR MONEYS WRONGFULLY RECEIVED AND HELD, I. E., CLERK, MUNICIPAL COURT DEPOSITED INTO MUNICIPAL TREASURY MONEYS HE SHOULD HAVE PAID TO TRUSTEES OF LAW LIBRARY ASSOCIATION, SECTION 3056 G. C.

SYLLABUS:

1. The payments required by Section 3056, General Code, to be made by the clerk of a municipal court to the trustees of a law library association are not to be reduced or in any way affected by the receipt or possession by such association of moneys obtained from gifts or other sources independent of those received pursuant to the terms of Sections 3056, 3056-1, 3056-2 and 3056-3 of the General Code.

2. The surplus required by the terms of Section 3058, General Code, to be refunded by the trustees of a law library association, arises solely from moneys received by the association under Sections 3056, 3056-1, 3056-2 and 3056-3 of the General Code.

3. Where the clerk of a municipal court has turned into the treasury of the municipality moneys which under the provisions of Section 3056, General Code, he should have paid to the trustees of a law library association, such municipality is legally liable to such association for moneys so wrongfully received and held.

Columbus, Ohio, September 18, 1943.

Hon. J. Donald Kincaid, Prosecuting Attorney,
Zanesville, Ohio.

Dear Sir:

I acknowledge receipt of your communication requesting my opinion, reading as follows:

"The Muskingum County Law Library Association and the Auditor of Muskingum County have requested that I ask your opinion upon the following questions herein stated.

The Muskingum County Law Library Association is a corporation not for profit organized under the laws of the State of Ohio and has maintained a law library in the Court House at Zanesville, Ohio, as provided in the General Code.

In the years 1942 and 1943, the County Auditor of Muskingum County, under the provisions of Section 3054, et seq., of the General Code, made an apportionment of the amount to be paid to the Law Library Association out of the fines collected in the Municipal Court of Zanesville, and in this connection fixed the maximum amount at \$3,000.00 each year.

In the year 1942 fines collected by the Municipal Court of Zanesville were sufficient to pay the maximum amount of \$3,000.00, but the Clerk of the Municipal Court refused to pay any part of the fines to the Law Library Association, although requested to do so. Requests were further made in the year 1943 for the payment of moneys due at the end of each month during that period and these requests have also been refused. In other words, the County Law Library Association has complied in all respects with the law of the State of Ohio relative to the matters to be performed on its part before receipt of money from the Municipal Court by it.

The City Clerk refuses to pay any moneys over to the Law Library Association for the claimed reason that the Muskingum County Law Library Association has an accumulated surplus amounting to approximately \$7,000.00. No part of this accumulated surplus arises from moneys paid by the city of Zanesville in any prior years. The accumulated surplus in the County Law Library Association was obtained over a period of years by reason of the fact that the County Law Librarian who was paid an annual salary of \$500.00 per year, as provided by the statute and under the orders of the Common Pleas Court of the county, in turn made a gift of this money to the Law Library Association. These funds have been invested in Government bonds for many years. The city's position is simply that any accumulated surplus from whatever source and from whatever year belonging to the County Law Library Association, must first be expended before the Clerk of the Municipal Court of the City of Zanesville would be required to make payment to the Law Library Association. The Law Library Association's position is that the General Code provides for an annual operating and maintenance income to Law Library Associations in accordance with the budget presented to the Auditor, he in turn making an allocation to the various courts; that the statute nowhere refers to any surplus other than that which might be created in any one year, which must be refunded under General Code Section 3058; that the Law Library Asso-

ciation is entitled to retain its surplus for emergency use or to be used to expand the library or to improve it and as an operating fund; that if the fines should be insufficient under the statute to pay the amount allocated and budgeted, the Law Library Association would seriously suffer if it did not have some surplus to make up such deficiency; that there are many law libraries in the state in similar situations, and that it has been recognized that the law provides for an annual income under the pertinent sections of the General Code irrespective of otherwise created surpluses; the County Auditor in making his prior certifications has acted on this assumption and has ignored the balance sheet surplus in bonds created by the gifts from the Law Librarian and has made a certification and allocation on the annual budget to the Municipal Court of the City of Zanesville. The County Auditor desires to know whether he has been correct in this matter or whether, in considering the budget of the County Law Library Association and in making his determinations and allocations in December, under General Code Section 3056, he must take into consideration the surplus heretofore mentioned."

On this state of facts you ask a series of questions which I think may be summarized in these three:

1. Is the clerk of the municipal court justified in declining to pay to the trustees of the Law Library Association the moneys that would be payable to such association under the provisions of Section 3056, General Code, on the ground that the association has surplus funds required from sources other than those mentioned in Sections 3056, 3056-1, 3056-2 and 3056-3 of the General Code?

2. Are the funds acquired and accumulated by the trustees of the Law Library Association from sources other than those mentioned in Sections 3056, 3056-1, 3056-2 and 3056-3, General Code, to be considered in determining the existence and amount of a surplus subject to refund under the provisions of Section 3058 of the General Code?

3. Is the city liable to the Law Library Association for moneys which have been turned into its treasury but which should, under the provisions of Section 3056, General Code, have been paid to the Law Library Association?

Your inquiry involves a consideration of Sections 3054 to 3058, inclusive, General Code.

Section 3054 provides in part as follows:

"The judges of the court of common pleas of any county in which there is a law library association which furnishes to all of the county officers and the judges of the several courts in the

county admission to its library and the use of its books free of charge, upon the appointment by the trustees of such library association of a person to act as librarian thereof, shall fix his compensation, which shall be paid from the county treasury. * * *

Section 3056 reads as follows:

"All monies collected by a municipal corporation, accruing from fines, penalties, forfeited deposits or forfeited bail bonds or forfeited recognizances taken from appearances, by a municipal court, police court or mayor's court for offenses and misdemeanors brought for prosecution in the name of a municipality 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 thereof, which plus all costs collected monthly in such state cases, equals the compensation allowed by 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, police, or mayor's court, and be paid by him forthwith, each month, to the trustees of such law library association in the county in which such municipal corporation is located, but the sum so retained and paid by the clerk of said municipal, police, or mayor's court to the trustees of such law library association shall in no month be less than 25% of the monies arising from such fines, penalties, and forfeited deposits, forfeited bail bonds and forfeited recognizances, taken for appearances, in that month, without deducting the amount of the allowance of the county commissioners to said judge, clerk and prosecutor.

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 forfeitures 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 3056-1 relates to fines and penalties collected by justices of the peace and provides for the payment of a certain portion thereof to the trustees of the law library association.

Section 3056-2 provides for like payment of fines and penalties collected by the clerks of common pleas and probate courts up to a stated maximum.

Section 3056-3 provides for the payment in like manner by the treasurers of the county or municipality of certain fines and penalties which have come into their hands up to a stated maximum.

Section 3056-4 provides:

“The money so paid under the foregoing sections of the statute shall be expended in the purchase of law books and in maintenance of such law library associations.”

Section 3058 reads as follows:

“On the first Monday of each year, the trustees of the association shall make a detailed statement to the auditor of the county, verified by the oath of the treasurer of the association, of the amount of the fines and penalties so received, and of the money expended by the association.

In the event the total amount received under sections 3056, 3056-1, 3056-2 and 3056-3 of the General Code during the preceding calendar year covered by such report exceeds the expenditures during the same period, the county auditor shall certify such fact to the trustees of the association, who shall thereupon direct the treasurer of the law library association to refund or repay, pro rata to the treasurers of the political subdivisions from which such balance was received, not less than 90 per cent of any unencumbered balance on hand from the preceding year.”

The provisions of the statutes above referred to which are particularly pertinent to your inquiry are those found in Sections 3056 and 3058, General Code.

It will be noted that Section 3056 gives the county auditor express authority to determine the maximum amount to be paid by each clerk of a municipal court, police court or mayor's court which shall in no event exceed \$3,000 as to any one of such courts in any calendar year. The same section makes it mandatory upon the clerk of such municipal court, police court or mayor's court to pay each month to the trustees of the law library association in the county in which such municipal corporation is

located the fines, penalties, etc., collected by him up to the maximum amount provided by that section and determined by the county auditor.

Section 3058 requires the trustees of the association, on the first Monday of each year, to make a detailed statement to the auditor of the county, verified by the oath of the treasurer of the association, of the amount of fines and penalties, *so received*, and of the money so expended by the association. The words "so received" relate clearly and exclusively to the moneys received from the fines, penalties, etc., mentioned in the several statutes to which I have called attention and cannot by any possible construction have reference to other funds which the association may have acquired by way of gifts, endowments, dues from members, or from any other sources independent of the statutes aforesaid. The association is under no obligation to report to the county auditor as to funds which it may have received or accumulated from any source other than those funds which it has obtained pursuant to the statutes above noted.

Section 3058 further provides that in the event the total amount received "under Sections 3056, 3056-1, 3056-2 and 3056-3 of the General Code" during the preceding calendar year exceeds the expenditures during the same period, then the law library association must refund pro rata to the treasurers of the political subdivisions from which such balance was received not less than ninety per cent of any unencumbered balance on hand from the preceding year. This provision likewise by its plain terms relates solely to moneys received from fines, penalties, etc., which have been paid to the association pursuant to the sections of the statute which are named, and can have no reference whatsoever to funds which the association may have acquired independently.

It therefore follows that a fund which has been built up by donations from the librarian of the law library association is wholly beyond the purview of the statutes under consideration in determining either the obligation of the clerks of any of the courts or the treasurers of any of the subdivisions named in the statutes to make contribution to such association, or in arriving at the balance, if any, which is subject, under the terms of Section 3058, to refund or repayment to the political subdivisions from which the moneys were received.

As to the salary of the law librarian which is fixed by the court, it will be observed that his compensation, provided for under Section 3054, is paid directly from the county treasury to such librarian. It does not pass into the hands of the trustees of the library association and does not enter into the question of their obligation to make a refund under Section 3058, General Code. The librarian has the right to donate his salary to

the library association if he sees fit, and such gift, along with other moneys acquired by the association independent of the statutes aforesaid, is wholly under the control of the trustees and not affected by any of the statutes under discussion.

Specifically answering your questions, it is my opinion:

1. Funds which the law library association has accumulated independent of the statutes are not to be considered in determining the obligation of the clerk of the municipal court to make payments to the law library association, as required by Section 3056, General Code.

2. The surplus, if any, which is to be refunded under the provisions of Section 3058, is based solely on the receipt and expenditure of moneys paid to the law library association, pursuant to Sections 3056, 3056-1, 3056-2 and 3056-3, General Code, as determined by the county auditor, and has no reference to funds of said association derived from other sources.

3. Assuming that the clerk of the municipal court of the city has turned into the treasury of the city the fines, penalties, etc., collected in the years 1942 and 1943, which under the provisions of Section 3056 he should have paid to the law library association, the city will be liable to the library association for the moneys so paid to it, and if paid by the city to the law library association, the association would have the right to reimburse its miscellaneous or independent funds for the amount advanced because of the failure of the clerk of the municipal court to make payments as required by law.

Respectfully,

THOMAS J. HERBERT,
Attorney General.