

**Note from the Attorney General's Office:**

1975 Op. Att'y Gen. No. 75-045 was questioned by  
2003 Op. Att'y Gen. No. 2003-016.

## OPINION NO. 75-045

**Syllabus:**

Under R.C. 1901.34 and R.C. 3375.50, the costs collected by the clerk of a municipal court in a state criminal proceeding are to be paid into the county treasury. (1961 Op. Att'y Gen. No. 2216 and 1953 Op. Att'y Gen. No. 2442 approved and followed.)

**To: Douglas MacGillivray, Logan County Pros. Atty., Bellefontaine, Ohio**  
**By: William J. Brown, Attorney General, July 1, 1975**

You have requested my opinion as to how the costs, collected after a municipal court conviction for violation of a state criminal statute, shall be apportioned between the municipality and the county. You state that in your county, in which the municipal court has county-wide jurisdiction, the municipality retains all costs collected in such state cases. Insofar as your question dealt with the costs arising from fees of witnesses and jurors, it was answered by 1974 Op. Att'y Gen. No. 74-077. You ask further whether the county should be reimbursed out of collected costs for the county's share of the compensation of the municipal court judge, the clerk of the court, and the city attorney who prosecutes such state cases.

Your letter states that the county, "which by statute pays 40% of the judge, referee, clerk and bailiff salaries and which by agreement pays 60% of the prosecutor's salary, receives absolutely nothing from the cost of prosecution collected in cases prosecuted in the name of the State of Ohio." The statutes to which you refer are R.C. 1901.11, 1901.31 and 1901.34. As to the judge, R.C. 1901.11 provides in part:

". . . .

"The compensation of municipal judges shall be paid in semi-monthly installments, three-fifths of such amount being payable from the city treasury and two-fifths of such amount being payable from the treasury of the county in which such city is situated. . . ."

As to the salary of the clerk, R.C. 1901.31(C) incorporates the provisions of R.C. 1901.11:

". . . °The clerk's compensation is payable in semimonthly installments from the same sources and in the same manner as provided in section 1901.11 of the Revised Code."

As to the prosecutor, R.C. 1901.34 provides that the city solicitor shall prosecute all violations of state statutes occurring within the territory of the municipal court, for which he shall receive \$4800 plus such additional compen-

sation as the board of county commissioners shall provide. In pertinent part, R.C. 1901.34 provides:

"The city solicitor, city attorney, or director of law . . . shall prosecute all criminal cases brought before the municipal court . . . for violation of state statutes or other criminal offenses occurring within the municipal corporation. . . . The city solicitor . . . shall prosecute all criminal cases brought before said court arising in the unincorporated areas within said territory, . . . and for assuming such additional duties, shall receive compensation at the rate of four thousand eight hundred dollars per year payable from the county treasury. . . . He shall receive for such services additional compensation to be paid from the treasury of the county as the board of county commissioners prescribes."

It is obvious, therefore, that the municipal court and the city solicitor do relieve the court of common pleas and the county prosecuting attorney of a considerable volume of litigation, since the municipal court has jurisdiction to finally try all misdemeanor cases within its territory and to act as a committing magistrate in felony cases. R.C. 1901.20 and R.C. 2931.041. In return, however, the county, under the sections of the Revised Code just cited, makes a considerable financial contribution "to aid in meeting the expense of prosecuting the so-called 'state cases'." 1952 Op. Att'y Gen. No. 2183, p. 792. See also 1952 Op. Att'y Gen. No. 1132, p. 116. In the first of these opinions my predecessor also said (at p. 792):

"Here it is to be remembered that there is no constitutional necessity for the General Assembly to provide for the additional compensation in the instant case since in matters of state-wide concern the state may impose duties and responsibilities upon its municipalities, and the creation of courts is an attribute of the sovereignty of the state. . . ."

The General Assembly must have been satisfied that it had struck a fair balance between the claims of the municipalities and the counties, for similar provisions have appeared in the various Municipal Court acts since 1913. See Opinion No. 2183, *supra*.

Furthermore, the General Assembly has regularly directed that fines and costs, collected in a criminal proceeding in a local court with dual jurisdiction, be divided according to the nature of the case - in a state case, to the county treasury; in a city case, to the municipal treasury. For instance, R.C. 1903.28 reads as follows:

"On the first Monday of each month, the clerk of the police court shall make, under oath, to the city auditor, a report of all fines, penalties, fees, and costs imposed by the court in city cases, . . . and, at the same time, he shall make a like report to the county auditor as to state cases. Such clerk shall immediately pay into the municipal and county treasuries, respectively, the amount then collected, . . . ." (Emphasis added.)

The parallel statute for municipal courts, R.C. 1901.31(F), is phrased differently. It reads in part as follows:

"The clerk of a municipal court shall receive and collect all costs, fees, fines, penalties, bail, and other moneys payable to the office . . . , and shall each month disburse the same to the proper persons or officers . . . , provided that fines received for violation of municipal ordinances shall be paid into the treasury of the municipal corporation . . . , and to the county treasury all fines collected for the violation of state laws, subject to sections 3375.50 and 3375.53 of the Revised Code." (Emphasis added.)

It will be noted that, while the clerk is directed to disburse all collected fines and costs to the proper officer, the proviso only directs that fines be paid into the county treasury, subject, however, to R.C. 3375.50. The distribution of the fines and costs under R.C. 1901.31(F) must, therefore, be determined in the light of R.C. 3375.50, which has been interpreted as requiring all costs collected in state cases to be paid into the county treasury. That section reads in pertinent part as follows:

"All moneys collected . . . by a municipal court for offenses . . . under a penal ordinance . . . 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. . . , and be paid. . . , each month, to the law library association in the county. . . ." (Emphasis added.)

One of my predecessors has described the language of this section (at that time G.C. 3056) as "somewhat awkward" and "not readily clear." 1953 Op. Att'y Gen. No. 2442, pp. 127, 128. Nevertheless, the emphasized language of the exception clause has been consistently interpreted as requiring that a portion of the fines and all of the costs collected in state cases shall either be paid into the county treasury, or at least credited against the county's share of the compensation of the municipal judge, the clerk, and the city solicitor.

In State, ex rel. Trustees v. Vogel, 169 Ohio St. 243 (1959), the Court, in quoting R.C. 3375.50, summarized the exception clause as follows (at p. 244):

". . . except for that part of such money needed to pay certain salaries . . . ."

The Court clearly read the exception clause to mean that costs collected after prosecution of a state case in municipal court should somehow be credited to the county's share of the salaries of the municipal officers.

In Opinion No. 2442, *supra*, my predecessor took the same position. He said (at p. 128):

"Although this statute does not contain any express provision relative to the disposition of sums thus deducted from funds accruing from the prosecution of state cases, it appears fairly evident that the sums thus remaining in the municipal officer's custody were to be made available eventually, whether directly or indirectly, to meet the county's obligation to the several court officers concerned with respect to the compensation allowed them by the county commissioners. Whether such sums are disbursed directly to the ultimate beneficiaries or whether paid into the county treasury and then disbursed to such beneficiaries would appear to be a matter of no moment so long as credit is given the county in the final accounting with respect to its obligation to pay the allowances made by the commissioners."

(Emphasis added.)

In 1961 Op. Att'y Gen. No. 2216 the then Attorney General was asked whether the moneys held by the clerk of the municipal court, under the exception clause of R.C. 3375.50, as the county's share of the compensation of the judge, the clerk and the prosecutor, should be paid directly to such officers or to the county treasury. My predecessor said (at pp. 274-275):

"Under said Section 1901.34, supra, the clerk pays fines in ordinance cases to the treasury of the municipal corporation and fines in state cases to the county treasury, 'subject to sections 3375.50 and 3375.53 of the Revised Code.' Referring again to Section 3375.50, supra, it would appear that the money collected from fines, penalties, and forfeitures for compensation of the judge, clerk and prosecutor is intended to be paid to the county. There is no specific provision to that effect, however, the reference to the 'compensation allowed by the board of county commissioners' implies that the money is intended to reimburse the county for its share of said compensation. Thus, the proper person or officer to whom the moneys collected by the clerk should be disbursed, in the case of money collected from fines, penalties, and forfeitures for compensation of the judge, clerk, and prosecutor, would be the county treasurer. . . . The only item not subject to the twenty-five per cent minimum is 'all costs' which are collected monthly in the state cases. These costs in state cases must go monthly toward the compensation, . . ."

On the basis of this reasoning my predecessor concluded in the first branch of the syllabus of that opinion;

"Under Section 3375.50, Revised Code, the portion of the money collected by the clerk of a municipal court, which plus all costs collected monthly in state cases equals 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, should along with such costs,

be paid to the county treasurer; and such portion and costs may not be paid directly to said judges, clerk, or prosecuting attorney."

In the light of these consistent interpretations of R.C. 3375.50, I am constrained to hold that costs collected in a municipal court prosecution of a state case must be paid into the county treasury. See also 1928 Op. Att'y Gen. No. 1775, and 1919 Op. Att'y Gen. No. 576.

In specific answer to your question it is my opinion, and you are so advised, that, under R.C. 1901.34 and R.C. 3375.50, the costs collected by the clerk of a municipal court in a state criminal proceeding are to be paid into the county treasury. (1961 Op. Att'y Gen. No. 2216 and 1953 Op. Att'y Gen. No. 2442 approved and followed.)