

4643

FEES—COSTS—TAXED AND COLLECTED BY MAYOR IN STATE CASES—SERVICES IN TRIAL OF STATE CASES—SHOULD BE PAID BY MAYOR INTO MUNICIPAL TREASURY—FIRST BUSINESS DAY OF EACH MONTH—SECTION 733.40 RC, AMENDED HB 675, 100 GA—NO SUCH REQUIREMENT WITH RESPECT TO SERVICES OF SHERIFFS, DEPUTY SHERIFFS AND CONSTABLES—SUCH FUNDS SHOULD BE DISTRIBUTED PURSUANT TO SECTIONS 311.17, 509.15 RC.

SYLLABUS:

Under the provisions of Section 733.40, Revised Code, as amended in House Bill 675, 100th General Assembly, all costs and fees taxed and collected by a mayor in state cases with respect to his own services in the trial of state cases should be paid by the mayor into the municipal treasury on the first business day of each month, but there is no such requirement for payment into the municipal treasury of fees and costs taxed and collected in such cases with respect to the services of sheriffs, deputy sheriffs, and constables, and such fees and costs should be distributed pursuant to the provisions of Sections 311.17 and 509.15, Revised Code.

Columbus, Ohio, December 15, 1954

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

“The following question has arisen from three different villages in the State of Ohio:

“Under Section 733.40 of the Revised Code (4270 G. C.), as amended in 1953, all court costs and fees collected by the mayor in states cases shall be by him paid into the municipal treasury on the first business day of each month.

“In state cases brought before the mayor, where the arrests were made by a sheriff, a deputy sheriff or a constable, are the costs taxed and collected for the sheriff, deputy sheriff, or constable, to be paid into the municipal treasury on the first business day of each month, or should such costs collected by the mayor be paid by the mayor to the sheriff of the county, or to the constable, as the case may be?

“Your consideration of this question will be greatly appreciated, as it appears that there are numerous cases arising in mayor’s courts in Ohio where the arrests are made by sheriffs, deputy sheriffs and constables.”

It may first be pointed out that Section 733.40, Revised Code, was twice amended by the 100th General Assembly, i.e., in House Bill 675 and in Senate Bill 361, the General Code revision bill. This latter bill was the later in time of passage. However, for the reasons pointed out in my Opinion No. 3506, dated February 23, 1954, it must be concluded that Section 733.40, Revised Code, as amended in House Bill 675, is the provision which is actually in effect.

The basis of the reasoning in my opinion No. 3506 which resulted in the conclusion that the provisions of the Code Revision Bill would not prevail over the conflicting provisions of other specific amendments enacted by the 100th General Assembly, is stated as follows:

“Under the peculiar factual situation presented, I am of the opinion that the true legislative intent cannot be determined by a blind acceptance of the test of giving effect to the statute which is later in time of passage. Here, I believe, such test is greatly outweighed by the fact that Amended Senate Bill No. 147 is clearly a considered substantive change of law enacted in a bill amending a single section of the law, while Senate Bill 361, in effect, is but a series of corrections deemed advisable as a sort of appendage to the previous recodification. The former is specific—the latter general. As noted before, Senate Bill 361 does not, by its terms, repeal Section 5719.01, as amended by Amended Senate Bill No. 147.”

Accordingly, we may note that Section 733.40, Revised Code, thus amended in House Bill 675, 100th General Assembly, makes the following provision for the disposition of fines and other moneys coming into the hands of the mayor by virtue of his exercise of the functions of magistrate:

“All fines, forfeitures, and costs in ordinance cases and all fees collected by the mayor, or which in any manner come into his hand, or which are due such mayor or a marshal, chief of police, or other officer of the municipal corporation, any other fees and expenses which have been advanced out of the treasury of the municipal corporation, and all money received by such mayor for the use of such municipal corporation, shall be paid by him into such treasury on the first Monday of each month. At the first regular meeting of the legislative authority each month, the mayor 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 sections 3375.50 to 3375.52, inclusive, of the Revised Code, all fines and forfeitures collected by the mayor in state cases, together with all fees and expenses collected which have been advanced out of the county treasury, shall be paid by him to the county treasury on the first business day of each month. All court costs and fees collected by the mayor in state cases shall be paid by him into the municipal treasury on the first business day of each month."

Your question, so far as it relates to a sheriff or deputy sheriff, may be disposed of by reference to Section 311.17, Revised Code, which lists in considerable detail the fees which may be allowed a sheriff in connection with the numerous services which he is authorized to perform for courts, including those fees allowable for his services in connection with making arrests.

This section provides in part:

"When any of the foregoing services are rendered by an officer or employee, whose salary or per diem compensation is paid by the county, the legal fees provided for such service in this section shall be taxed in the costs in the case, and when such fees are collected they shall be paid into the general fund of the county."

The effect of a prior statutory provision analogous to this was pointed out in Opinion No. 1407, opinions of the Attorney General for 1930, p. 95, the syllabus of which is as follows:

"1. By virtue of the provisions of Section 13432-9 of the General Code, the mayor of a village may legally issue a warrant of arrest directed to a sheriff, deputy sheriff or constable if the offense is a violation of the state laws.

"2. The fees provided by Section 2845 of the General Code, for the services of a sheriff and deputy sheriff, and the fees provided in Section 3347 for a constable in serving warrants directed to them by a mayor of a village, in state cases, may be legally taxed and collected from defendants, and such fees may be paid to these officers. However, the fees so collected by a sheriff or deputy sheriff must be paid into the general fund of the county."

The applicable statutory provisions have not been changed in pertinent part since the rendition of that opinion and the conclusions therein reached would seem to dispose of your inquiry.

It is true that in Section 733.40, Revised Code, a new provision was

added in the final sentence of the section as enacted in House Bill 675, supra, with respect to the payment of certain funds into the municipal treasury. This provision is as follows:

“* * * All court costs and fees collected by the mayor in state cases shall be paid by him into the municipal treasury on the first business day of each month.”

It very clearly appears, however, that the primary purpose of this enactment was to reduce the interest of mayors in the outcome of criminal cases tried by them and that this result was attained by eliminating the authority of mayors to receive fees in connection with cases tried by them. To this end three sections of the Revised Code were amended, including the one here under consideration. See 125 Ohio Laws, 297. The addition of this provision to Section 733.40, therefore, can be regarded as having application only to the costs and fees taxed and collected with respect to the services of the mayor himself in state cases, and it may be concluded that it has no application whatever to the fees of sheriffs, deputy sheriffs, and constables.

Accordingly, in specific answer to your inquiry, it is my opinion that while under the provisions of Section 733.40, Revised Code, as amended in House Bill 675, 100th General Assembly, all costs and fees taxed and collected by the mayor in state cases with respect to his own services in the trial of state cases should be paid by the mayor into the municipal treasury on the first business day of each month, there is no such requirement for payment into the municipal treasury of fees and costs taxed and collected in such cases with respect to services of sheriffs, deputy sheriffs and constables, and such fees and costs should be distributed pursuant to the provisions of Sections 311.17 and 509.15, Revised Code.

Respectfully,

C. WILLIAM O'NEILL
Attorney General