

period of time rather than a short period. In fact, it is seldom that an entire business block may be obtained on a lease for a short period.

On the other hand, a short term lease on an entire office building may be of great disadvantage to the county. It is almost inconceivable that an office building can be found that is of such nature that the trade fixtures of county offices may be placed therein without adaptation. If the lease is for a short period the lessor is entitled to possession at the end of the term, at which time other equally convenient and suitable quarters may not be readily available. If they are so available, some additional expense must necessarily be incurred to adjust the space to public office use.

If the premises in question are suitable in location and structure for county offices and the price is reasonable therefor, I have found no authorities which would hold that a lease for a period of ten years is beyond the power of such board. Especially does this appear to be true by reason of the fact that a board of county commissioners in Ohio is a continuous one. The term of one or more of the members may be terminated by an election but the terms of all the members never end at the same time.

Specifically answering your inquiry, it is my opinion that a board of county commissioners in good faith and without fraudulent intent may, under the authority of Section 2433, General Code, enter into a lease of a building necessary and convenient for the housing of such county offices as may not be housed in the court house, for a period of ten years at a rental for such term reasonable in amount, if in the use of its discretion such lease is advantageous to the county.

Respectfully

THOMAS J. HERBERT,
Attorney General.

1063.

LAW LIBRARIES—MAINTENANCE—FUND—COLLECTION,
FINES, PENALTIES, COSTS, BONDS, FORFEITURES—
COUNTY — MUNICIPALITY — INTERPRETATION AND
CONSTRUCTION SECTIONS 3056, 3056-1, 3056-2, 3056-3,
3056-4, 3058, G. C.

SYLLABUS:

Interpretation and construction of Amended Senate Bill No. 46, 93rd General Assembly, enacting sections 3056, 3056-1, 3056-2, 3056-3, 3056-4, and 3058, General Code, to provide a fund for the maintenance of law libraries.

COLUMBUS, OHIO, August 19, 1939.

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

GENTLEMEN: This will acknowledge receipt of your recent communication, wherein you request that I interpret Amended Senate Bill

No. 46 of the 93rd General Assembly, in view of the anticipated large number of inquiries concerning the application of that law to municipal and mayor's courts, and further, in the interest of state-wide uniformity in the administration of said bill.

Amended Senate Bill No. 46, supra, will become effective August 31, 1939. The purpose of its passage is contained in the title thereof, as follows:

"AN ACT

To amend sections 3056 and 3058 of the General Code and to supplement section 3056 by the enactment of supplemental sections 3056-1, 3056-2, 3056-3 and 3056-4, to provide a fund for the maintenance of law libraries."

In answering your request, I propose to discuss each section of the bill in the order of its appearance therein.

Section 3056, General Code, as amended, provides as follows:

"All monies collected by a municipal corporation, accruing from fines, penalties, forfeited deposits or forfeited bail bonds or forfeited recognizances, taken for 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 first 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 of 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."

By its terms that section requires the clerk of the municipal court, police court or mayor's court of a municipal corporation to retain all monies collected by such courts which accrue from fines, penalties, forfeited deposits, forfeited bail bonds and forfeited recognizances, taken for appearances for (1) offenses and misdemeanors brought for prosecution in the name of a municipality under a local penal ordinance where there is in force a state statute under which the offense might be prosecuted, or (2) prosecuted in the name of the state. Each clerk is then required to pay monthly to the trustees of the law library association of the county in which the municipal corporation is situated the monies so collected except a portion thereof which, plus all costs collected monthly in *state* cases, equals the compensation allowed by the county commissioners to the judges of the municipal court presiding in police court, clerk and prosecuting attorney of such court in state cases. In other words, the amount to be paid is determined by adding to the monies collected the costs in state cases and from that sum subtracting the compensation allowed by county commissioners.

The section further provides that the amount so retained and paid shall in no month be less than twenty-five per cent of the total collection without deducting the allowances to the municipal judges, clerk and prosecutor. A proviso is then inserted which limits the total amount which may be paid to the law library trustees of the county to \$7500.00 in any one calendar year, and further, that no one of such courts of a municipal corporation may pay in excess of \$3,000.00, of such \$7,500.00 county maximum, in any one calendar year. In December of each year the county auditor is charged with the duty of determining the maximum amount which the clerk of each municipal, police or mayor's court may pay for the next succeeding calendar year, such amount to bear the same ratio

to \$7,500.00 as the total fines, costs, and forfeitures received by such 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. When so determined, the clerks are required to make monthly payments to the trustees, bearing in mind, of course, the twenty-five percent proviso above explained, until such time, to be determined by the county auditor, when the maximum for the particular year shall have been paid. At that time no further payments are required from the clerk of the court so paying.

It is conceivable, in view of the dual maximum restrictions of \$7,500.00 per county and \$3,000.00 per municipality therein, that the law library association of a county, wherein is located one or more large municipalities, may not be able to receive the total amount of \$7,500.00 authorized under this section. For example, assuming that in an annual period the total fines, etc., collected by the municipal court of a large city amounted to fifty percent of the total fines, etc., collected by all municipal, police and mayor's courts within the county including such large municipality, the maximum amount, as determined by the county auditor, payable to the law library trustees by the clerk of such municipal court, would be \$3,750.00. Only \$3,000.00, however, could be paid by such clerk. It follows, therefore, that the remaining \$750.00 of that municipal court's share would be lost to the law library, as there is no provision in the section which would permit the county auditor to spread this amount over the remaining municipalities in such county.

It will be noted that the law requires the county auditor to determine the ratios in December of each year and the Legislature having made no provision for such determination at any other time and having repealed existing Section 3056, it follows that the new section in question, although effective August 31, 1939, will not and can not become operative until December, 1939, and in view of that situation no monthly payments out of the monies specified therein can be made to law library trustees from the effective date of Amended Senate Bill No. 46, *supra*, to the end of the calendar year 1939. The first payments under the new Section 3056 will, therefore, fall due in January, 1940.

This section speaks of fines, penalties and forfeitures arising out of 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. Section 3056-3, *post*, specifically deals with the monies arising from fines, penalties and forfeitures prosecuted under the Liquor Control Act and state traffic laws in *any* court within a county. These sections are in *pari materia* and under accepted rules of statutory construction it follows that the offenses referred to under Section 3056, *supra*, do not include those dealt with by Section 3056-3, *post*. It obviously could not have been the intent of the Legislature that the trustees

of a law library association should benefit twice from a fine, penalty or forfeiture collected in a single case.

In concluding my discussion of Section 3056, it is my opinion that its provisions are applicable to all municipal courts, regardless of conflicting provisions which might be contained in the act creating each. In support of this view, I direct your attention to the Opinions of the Attorney General for 1929, Volume II, page 1434, wherein the then Attorney General was called upon by your Bureau to interpret Section 3056, as then amended by the 88th General Assembly, in similar manner as you have called upon me in view of the amendments enacted to said section by the 93rd General Assembly. I quote from page 1436 of said volume:

“In the first place, it is believed that one of the purposes of such enactment was to make the section have general application to all municipal and police courts, irrespective of the special provisions of the various acts establishing municipal courts in order to eliminate the confusion that has arisen, as hereinbefore referred to.

While it is a general rule of law that a special act will control over the provisions of a general act, notwithstanding the general act is later in the order of enactment, however, where a general act expressly and specifically mentions certain things, clearly showing the intent of the Legislature to legislate upon the particular subject, it will control over a special act upon the same subject matter, notwithstanding the act is general.

In the case of *State ex rel. vs. Cleveland*, 115 O. S., 484, it was held, as disclosed by the first branch of the syllabus:

“Where it is evident that, by general law, the General Assembly was engaged in specific legislation upon a particular subject, an earlier special act, legislating generally upon the same and other subjects, is superseded by the later legislation upon that particular subject. In this case construing both acts in *pari materia*, it was manifestly the legislative purpose, by its adoption of the later enactment of 1920 (Section 6212-18, General Code; 108 O. L., Pt. 2, 1184), to segregate all fines imposed for violation of criminal offenses under that act from the fines generally imposed and collected under the provisions of the Cleveland Municipal Court Act (Section 1579-41, General Code) adopted in 1915. And to the extent that the provisions of such municipal act relate to the disposition of fines imposed and collected for violation of the “Crabbe Act”, it is inconsistent with and is superseded by the later act specifically controlling that subject.”

It is believed that the principle announced in said decision is

clearly applicable to the question you present as to whether or not the amendment of Section 3056 operates upon all municipal courts of the state. The provisions of the municipal court acts, for the most part at least, are general to the effect that all fines and penalties shall be paid into the municipal treasury. The amendment of Section 3056 is a general act, but contains specific legislation on a particular subject and, therefore, in so far as it is inconsistent with the former special acts which dealt with the subject generally, will control. In view of the foregoing, I have no difficulty whatever in arriving at the conclusion that all municipal courts in Ohio, at the time of the taking effect of Section 3056, as amended, are subject to the provisions thereof."

Coming now to a consideration of the supplemental sections, Section 3056-1, General Code, provides as follows:

"In each county of the state, 50% of all monies collected by justices of the peace of such county, accruing from fines, penalties, forfeited recognizances, and forfeited cash deposits, unless otherwise distributed by law, shall be paid to the trustees of the law library association of such county by the county treasurer thereof, upon the voucher of the auditor of such county within thirty days after such monies have been paid into the county treasury by such justices of the peace."

That section requires that fifty percent of all monies collected by justices of the peace of a county accruing from fines, penalties, forfeited recognizances and forfeited cash deposits be paid to the law library trustees of the county in which the justice of the peace court is located, by the county treasurer upon the voucher of the county auditor within thirty days after such moneys have been paid into the county treasury by the justices of the peace. By its express terms the section excludes all such monies which are required by statute to be distributed in a particular manner. This limitation, however, will not exclude monies arising from fines, penalties and forfeitures under the Liquor Control Act or state traffic laws, in view of the language of Section 3056-3, post, applicable to *any* court in a county. The monies so collected by a justice of the peace under both of those acts will be paid to the law library trustees, as provided in Section 3056-3, post.

The provisions of Section 3056-3, referred to above, read as follows:

"In each county, 50% of all monies arising from fines, penalties, forfeited deposits and forfeited bail bonds and recognizances taken for appearances on account of offenses brought for prosecution in any court in such county, under the liquor control

act, and the state traffic laws or any amendment or modification of said acts, shall be paid monthly by the treasurer of such county or municipality to the trustees of the law library association in such county, but the sum so paid to such trustees by each respective treasurer under the provision of this section shall not exceed \$1200.00 per annum, under the liquor control act, and when that amount shall have been so paid to the trustees of such law library association, in accordance with the foregoing provisions of this section, then no further payments shall be required thereunder in that calendar year from such respective treasurers."

Under authority of that section in each county fifty percent of all monies arising from fines, penalties, forfeited deposits and forfeited bail bonds and recognizances taken for appearances on account of offenses brought for prosecution in any court of a county under the Liquor Control Act and the state traffic laws, must be paid monthly by the treasurer of the county or the municipality to the law library trustees of the county. The act, however, limits the amount which each such treasurer may so pay, to the sum of \$1200.00 per annum under the Liquor Control Act. There being no limitation set for monies arising from violations of state traffic laws, it follows the respective treasurers must pay fifty percent of all monies so collected to the law library trustees.

The disposition of fines and forfeited bonds collected for violations of the Liquor Control Act is provided in section 6064-59, General Code, as follows:

"Money arising from fines and forfeited bonds collected under any of the penal laws of this state relating to the manufacture, importation, transportation, distribution or sale of beer or intoxicating liquor shall be paid one-half into the state treasury to the credit of the general revenue fund therein and one-half into the treasury of the county where the prosecution is held."

At first glance, that section appears in conflict with Section 3056-3, supra. However, a closer examination reveals that under Section 3056-3 the duty to pay fifty percent of the monies collected thereunder rests with the treasurer of the county. Such treasurer, however, under Section 6064-59, supra, receives only fifty percent of the monies collected thereunder and he therefore is only able to pay one-half of that fifty percent, or one-fourth of the total monies so collected for such violations, to the law library trustees. This interpretation effects a reconciliation of the two sections and, I feel, is in accord with the legislative intent. However, should a fine, etc., result from a prosecution in the name of a municipality under a penal ordinance thereof dealing with liquor control, where there

is in force a state statute under which the offense might be prosecuted, the monies so collected would be distributed under Section 3056, supra.

Section 1181-5, General Code, contains provisions relative to fines collected and monies arising from forfeited bonds for violation of state traffic laws when the arrests are made by state highway patrolmen. Said section reads as follows:

“All fines collected from, or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen shall be paid one-half into the state treasury and one-half to the treasury of the incorporated city or village where such case may be prosecuted. Provided, however, if such prosecution is in a trial court outside of an incorporated city or village such money shall be paid one-half into the state treasury. Such money so paid into the state treasury shall be credited to the ‘state highway maintenance and repair fund’ and such money so paid into the county, city or village treasury shall be deposited to the same fund and expended in the same manner as is the revenue received from the registration of motor vehicles.

The trial court shall make remittance of such money as prescribed by law and at the same time as such remittance is made of the state’s portion to the state treasury such trial court shall notify the superintendent of the state highway patrol of the case or cases and the amount covered by such remittance.

All salaries and expenses of members of the state highway patrol and all expenditures for vehicles, equipment, supplies and salaries of clerical forces and all other expenditures for the operation and maintenance of the patrol shall be paid by the treasurer of state out of the state highway maintenance and repair fund.”

That section is in conflict with Section 3053-3, supra, as regards the disposition of fines, etc., arising from violations of state traffic laws when the arrests are made by state highway patrolmen. Section 3056-3, supra, requires payment of a portion of those monies to the law library trustees of a county, while Section 1181-5, supra, provides that fifty percent of such monies shall be paid into a county, city or village treasury and deposited to the same fund and expended in the same manner as is the revenue received from the registration of motor vehicles. In such case resort must be had to that rule of statutory construction to the effect that a special statute prevails over a general statute. Section 3056-3, supra, is a general statute dealing with the disposition of all fines, etc., arising out of violations of state traffic laws. Section 1181-5, supra, is special in nature, dealing with fines, etc., collected in those cases in which arrests were made by state highway patrolmen. It follows, therefore, that monies

arising from fines collected and bonds forfeited by persons apprehended or arrested by state highway patrolmen for violation of state traffic laws shall continue to be distributed under the provisions of Section 1181-5, supra. All other fines, etc., collected for violations of state traffic laws, however, will be disbursed as provided in Section 3056-3, supra.

I have not discussed the provisions of Sections 3056-2, 3056-4 and 3058 of Amended Senate Bill No. 46, because the language contained in each is very clear and requires no interpretation or construction.

Respectfully

THOMAS J. HERBERT,
Attorney General.

1064.

DITCH, JOINT COUNTY—CONSTRUCTION—WHEN DEPOSIT SUCCESSFUL BIDDER FORFEITED—WHERE COUNTY COMMISSIONERS PERFORM ADDITIONAL SERVICES TO OBTAIN NEW BIDDER—CONTRACT—HOW PER DIEM COMPENSATION GOVERNED—WHERE DUTIES PERFORMED IN FOREIGN COUNTY—ACTUAL EXPENSES MAY BE PAID—SECTIONS 6479, 6502, G. C.

SYLLABUS:

1. *When the deposit of a successful bidder for the construction of a joint county ditch is forfeited under the provisions of Section 6479, General Code, and the members of the joint board of county commissioners in charge of said improvement are required to perform additional services to obtain a new bidder with whom a contract may be made, the per diem compensation of such commissioners is governed by the four day limitation contained in Section 6502, General Code.*

2. *Such commissioners, however, may be paid the amount of their actual expenses incurred in the performance of their respective duties at places other than in their own county.*

COLUMBUS, OHIO, August 19, 1939.

HON. MARTIN E. HOEFFEL, *Prosecuting Attorney, Napoleon, Ohio.*

DEAR SIR: I am in receipt of your communication wherein you request my opinion on the following:

“If the deposit made by a contractor at the time of filing a sealed bid for construction of a joint county ditch is forfeited to the counties because the successful bidder failed to sign a contract and furnish bond, can the joint Board of County Commis-