

1888.

CRIMINAL COURT OF LORAIN—ONE-HALF OF FINES COLLECTED UNDER SECTION 6212-13 G. C. PAYABLE TO CITY TREASURER—WHEN COSTS ADVANCED OUT OF COUNTY TREASURY ARE PAYABLE INTO THAT TREASURY—BALANCE PAYABLE TO CITY TREASURER UNDER SECTIONS 13740-17 AND 4270 G. C.

1. *One-half of the fines collected in the Lorain criminal court, under section 6212-13 G. C. (Crabbe Act) is payable to the city treasurer.*

2. *In said court in such cases costs taxed and collected which had been advanced out of the county treasury, are payable into that treasury. The rest of said costs are payable to the city treasurer under section 13740-17 and 4270 G. C., as amended.*

COLUMBUS, OHIO, March 2, 1921.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your request for an opinion upon the following statement of facts:

"We are today in receipt of the following communication from Judge John M. Harding of the municipal court of Lorain, Ohio:

'Section 14740-13 G. C., (Sec. 1): There is hereby established in the city of Lorain, Lorain county, Ohio, a criminal court * * * which court shall * * * be a court of record and shall have jurisdiction of any offense under any ordinance of the city of Lorain and of any misdemeanor committed within the limits of Lorain county, to hear and finally determine the same and impose the prescribed penalty; * * * (Vol. IV, p. 3859, P. & A. Supp.)

Section 14740-20 G. C. provides among other things that 'The judge shall be elected by the electors of said city of Lorain at the regular fall elections'.

Section 7 of House Bill No. 620 (the Crabbe Act), Vol. 108, part 2, page 1184, provides: 'Money arising from fines and forfeited bonds shall be paid one-half into the state treasury credited to the general revenue fund, one-half to the treasury of the township, municipality or county where the prosecution is held, according as to whether the officer hearing the case is a township, municipal or county officer.'

"Under resolutions heretofore duly passed by the board of county commissioners both the judge and prosecutor of this court are paid from the treasury of Lorain county certain monthly sums for prosecutions in this court of violations of state laws.

From prosecutions for violations of the above numbered House Bill, committed in Lorain county but not within the city of Lorain, money representing both fine and costs, but no forfeited bond, has accumulated.

One-half of said fine must be paid to state treasury:

QUESTION: To whom must the other half of fine be paid, county or municipal treasury?

To whom must costs be paid, the resolution above mentioned requiring all costs in state cases to be paid into Lorain county treasury?"

The act establishing the criminal court at Lorain was considered in Opinion No. 1679, directed to your department. It is pointed out in that opinion that this

court has the essential characteristics of a police court (See also Opinions of the Attorney-General for 1915, Vol. I, p. 264), but it was not expressly decided in that opinion whether it was a municipal or a state court. It is noted you desire to know to which treasury, that is, the county or city treasury, shall the one-half of fines collected under section 6212-19 (of the so-called Crabbe act) be paid. That section provides for the payment of one-half of the fines to the state and one-half to the township, municipal or county treasury "according as to whether the officer hearing the case is a township, municipal or county officer."

It is the opinion of this department that this provision is special and controls in case of conflict with other general laws relating to the disposition of fines. The answer to your first question, therefore, is found in the Crabbe act itself. In this opinion the status of the judge of the Lorain criminal court is considered only from the viewpoint and for the purpose of distributing these particular fines.

Section 7 of the act (6212-19) must be read with section 6212-18, which in part provides:

"Any justice of the peace, mayor, municipal or police judge, probate or common pleas judge within the county, with whom the affidavit is filed",

shall have final jurisdiction in prosecutions under that act. Attention is directed to the grouping of mayors, municipal and police judges, together, and of probate and common pleas judges together, in this section.

Regardless of what kind of an officer tries the case, the state gets one-half of the fine and no more. The effect of giving jurisdiction to the probate and common pleas judges, in connection with the provision in the succeeding section for one-half of the fine to go to the county, is that for the purpose of distributing these fines such judges were regarded as county and not state officers. Upon the same reason it is believed that the "mayor, municipal or police judge", mentioned in section 6212-18, are regarded in section 6212-19 as municipal officers and that the justice of the peace, similarly vested with jurisdiction, in the provision of this latter section is regarded as a township officer.

This department in the 1915 opinion cited concluded that as to disposition of fines, the Lorain criminal court was essentially a police court. From this it follows that it is the opinion of the Attorney-General that one-half of the fines collected in the Lorain criminal court, under section 6212-13 G. C. (Crabbe act) shall be paid to the city treasurer.

Your second question relates to the accounting and disposition of fees collected as costs. Section 6212-19, *supra*, makes no provision as to the distribution of costs collected. Section 13740-17 of the Lorain court act, as amended in 108 O. L., Part II, page 1212, requires the same disposition and accounting of fees as is provided in section 4270, amended at the same time and in the same act; for mayors.

By reference, therefore, section 4270 provides the rule for accounting for such costs. This section is as follows:

"All fines and forfeitures in ordinance cases and all fees collected by the mayor, or which in any manner comes 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 moneys 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, provided that the council of a village may, by ordinance, authorize the mayor and marshal to retain their legal fees in addition to their salaries, but in such event a marshal shall not be entitled to

his expenses. At the first regular meeting of council in each and every month, he shall submit a full statement of all moneys 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."

Here the distribution is made not according to the status of the officer trying the case, but is made according to the character of the case in which the fine is imposed. In ordinance cases all fees collected go into the city treasury and in state cases the costs advanced out of the county treasury are paid into that treasury, but other costs are payable into the city treasury. Cases arising under the Crabbe act are, of course, state cases, and as this department has construed section 4270 particularly in Opinion 1393, you are advised that in such cases costs which have been advanced out of the county treasury are payable to the county treasurer and the rest of said costs are payable to the city treasurer.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1889.

SCHOOLS—WHERE COUNTY BOARD OF EDUCATION ASSUMES CONTROL OF SCHOOLS OF LOCAL DISTRICT UNDER PROVISIONS OF SECTION 7610-1 G. C.—MONEYS EXPENDED, HOW CHARGED—WHERE CONTROL ASSUMED BECAUSE OF DEFAULT OF LOCAL BOARD AND FUNDS EXHAUSTED—DUTY OF LOCAL BOARD TO RAISE MONEY TO MEET OBLIGATIONS INCURRED BY COUNTY BOARD—MAY LEVY TAX TO EXTENT OF THREE MILLS IRRESPECTIVE OF ALL LIMITATIONS UPON VOTE OF ELECTORS FOR LOCAL SCHOOL PURPOSES—WHEN LOCAL BOARDS OF EDUCATION MAY BORROW OR ISSUE BONDS WITHOUT VOTE OF ELECTORS.

1. *Where the county board of education has assumed control of the schools in a local school district under the provisions of section 7610-1 G. C., the moneys expended by the county board in such local district become a charge against the local district and the amounts so paid from the general fund in the county treasury by the county board of education shall be retained from the proper funds due such local school district at the time of making the semi-annual distribution of taxes.*

2. *Where the county board of education has assumed control of the schools in a local school district because of the default of the local board and the funds of such local district are exhausted, it becomes the duty of the board of education in the local district to raise the money necessary to meet the obligations incurred in such local district by the county board of education in keeping the schools going.*

3. *For local school purposes boards of education in local districts may levy a tax to the extent of three mills irrespective of all limitations upon vote of the electors, as set forth in sections 5649-4, 5649-5 and 5649-5a G. C.*

4. *For the funding of those obligations which are valid, existing and binding,*