

5280.

COUNTY TREASURER—COMPENSATION RECEIVED FROM
CONSERVANCY DISTRICT MUST BE PAID INTO COUNTY
TREASURY.

SYLLABUS:

The compensation received by the county treasurer under the provisions of Section 6828-56, General Code, should be paid into the county treasury pursuant to Section 2977, General Code.

COLUMBUS, OHIO, March 21, 1936.

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

GENTLEMEN: This will acknowledge receipt of your request for my opinion, which reads as follows:

“You are respectfully requested to furnish this department your written opinion upon the following:

Section 6828-56, General Code, provides for the collection of conservancy taxes by the county treasurer, and contains a provision that the county treasurer shall retain for his services one per cent of the amount he collects on delinquent taxes.

Question: May the county treasurer retain for his own use the one per cent of the delinquent taxes collected by him, or is he required to pay the same into the county treasury to the credit of the general fund, under the provisions of Section 2977, General Code?”

Section 6828-56, General Code, was passed in 104 O. L., Page 48 (1914), as part of the Conservancy Act. This section reads in full as follows:

“If any county treasurer or other person entrusted with the collection of these assessments refuses, fails or neglects to make prompt payment of the tax or any part thereof collected under this act to the treasurer of said district upon his presentation of a proper demand, then he shall pay a penalty of ten per cent on the amount of his delinquency; such penalty shall at once become due and payable and both he and his securities shall be liable therefor on his official bond. The said county treasurer shall retain for his services one per cent of the amount he collects on delinquent taxes.”

Section 2977, General Code, was passed in 98 O. L., Page 89 (1906). This section was amended in 108 O. L., Pt. 2, Page 1216, (1919). However, the amendment merely changed the section to include the surveyor (now county engineer). This section now reads as follows:

“All the fees, costs, percentages, penalties, allowances and other perquisites collected or received by law as compensation for services by a county auditor, county treasurer, probate judge, sheriff, clerk of courts, surveyor or recorder, shall be so received and collected for the sole use of the treasury of the county in which they are elected and shall be held as public moneys belonging to such county and accounted for and paid over as such as hereinafter provided.”

The question you present revolves itself around the intent of the legislature when they enacted Section 6828-56, General Code, supra. Did the legislature, when they used the language “shall receive for his services one per cent” mean that the county treasurer shall receive this sum for his own personal use or did the legislature intend that he should turn this money into the county treasury under the provisions of Section 2977, General Code?

Since the legislature did not expressly amend or repeal Section 2977, General Code, the question arises as to what was the intent of such body in enacting Section 6828-56 without changing said Section 2977, General Code. It is a well known principle of law that the legislature is presumed to know the existing law relating to subjects with which it deals. See Lewis' Sutherland Statutory Construction (2nd Ed.), Vol. II, Section 447, Page 852. See also 55 O. S. 82, 89. The following appears in the above work on statutory construction at Page 852:

* * * * *

The legislature are presumed to know existing statutes, and the state of the law, relating to the subjects with which they deal. Hence, that they would expressly abrogate any prior statutes which are intended to be repealed by new legislation. Where there is no express repeal none is deemed to be intended, unless there is such an inconsistency as precludes this assumption; then it yields only to the extent of the conflict. * * *

When the legislature enacted Section 6828-56, it knew or is presumed to have known that Section 2977, General Code, requires the county treasurer to turn in all allowances to the county treasury. How then can the legislature be said to have intended anything else than that the county

treasurer should turn this allowance into the county treasury under the terms of Section 2977, General Code? Wherever possible, effect should be given to the language of all statutes. It is possible to read the two sections together in perfect harmony by holding that the allowance the county treasurer receives under Section 6828-56, General Code, should be paid into the county treasury, pursuant to Section 2977, General Code. The following comment in reference to Section 2977, General Code, is to be found in 11 Ohio Jurisprudence, Paragraph 189, Page 448:

“Prior to the enactment of the Salary Act, county treasurers were compensated by fees and percentages on tax collections, etc. The present statute contains provisions for the payment of certain fees to a county treasurer who collects overdue taxes by distress, or who collects delinquent taxes assessed in another county against a resident of his county. Provision is also made for the allowance to the treasurer, on his semi-annual settlement with the county auditor, of certain percentages on money collected by him on tax duplicates, including the inheritance tax duplicate.

The treasurer must certify at each semi-annual settlement that the fees and percentages allowed him in such settlement, together with any other specified fees allowed him by or in pursuance of law, are all the fees allowed, paid to, or received by him during the six months preceding the settlement, and he must testify under oath to the correctness thereof.

These provisions of the statute must, of course, be construed in connection with the provisions of the Salary Act which make the salary and compensation provided thereby a substitute for all fees, costs, etc., collected and received by the county treasurer and other officers to whom it relates, limit their compensation in any case to \$6,000, require all fees, etc., to be received for the sole use of the county treasury, and forbid the collection of fees from the county.”

In view of the above, and without extending this discussion, it is my opinion in specific answer to your inquiry that the compensation received by the county treasurer, under the provisions of Section 6828-56, General Code, should be paid into the county treasury pursuant to Section 2977, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.