

2041.

LIBRARY ASSOCIATION—NOT ENTITLED TO PERCENTAGE COSTS
COLLECTED IN STATE CASE IN MUNICIPAL COURT OF TOLEDO.

SYLLABUS:

1. *The provisions of Section 3056, General Code, are applicable to fines and penalties assessed and collected by the Municipal Court of Toledo.*
2. *The Lucas County Law Library Association is not entitled to any percentage of "costs" collected in state cases prosecuted in the Municipal Court of Toledo.*

COLUMBUS, OHIO, May 1, 1928.

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

GENTLEMEN:—This will acknowledge your letter which reads:

"Section 1579-314 G. C., as amended 112 O. L. 224 provides that the clerk of the municipal court of Toledo shall receive and collect all costs, fees, fines and penalties and shall pay the same quarterly into the treasury of the City of Toledo and take a receipt therefor, except as otherwise provided by law. Fifteen per cent of all fines collected in state cases is being paid to the county law library association.

QUESTION: Is such county law library association entitled to fifteen per cent of all costs collected in state cases?"

By an act passed April 21, 1927 (112 v. 219), the Legislature amended Section 1579-314, General Code, to read, in so far as pertinent to your inquiry, as follows:

"* * * he (the clerk of the Municipal Court) shall receive and collect all costs, fees, fines and penalties and shall pay the same quarterly into the treasury of the City of Toledo and take a receipt therefor, except as otherwise provided by law, * * *. He shall succeed to and have all the powers and perform all the duties of police clerks as herein otherwise provided."

Section 1579-314, General Code, prior to its amendment, *supra*, read as follows:

"* * * he shall receive and collect all costs, fees, fines and penalties and shall pay the same monthly into the treasury of the City of Toledo and take a receipt therefor, except as otherwise provided by law: * * * He shall succeed to and have all the powers and perform all the duties of police clerks, except as herein otherwise provided."

You will note that the only substantial change effected by the amendment in so far as the question you present is concerned is that now the clerk "shall pay the same *quarterly* into the treasury of the City of Toledo," whereas the section formerly provided the clerk "shall pay the same *monthly* into the treasury of the City of Toledo." Other than this the section reads substantially the same now as before its amendment.

Section 3056, General Code, provides in part as follows:

"All fines and penalties assessed and collected by the police court for offenses and misdemeanors prosecuted in the name of the state, except a portion thereof equal to the compensation allowed by the county commis-

sioners to the judges, clerk and prosecuting attorney of such court in state cases shall be retained by the clerk and be paid by him quarterly to the trustees of such law library association, but the sum so retained and paid by the clerk of said police court to the trustees of such law library association shall in no quarter be less than 15 per cent of the fines and penalties collected in that quarter without deducting the amount of the allowances of the county commissioners to said judges, clerk and prosecutor.

* * * The moneys so paid shall be expended in the purchase of law books and the maintenance of such association."

You will note that this section pertains only to the disposition of "fines and penalties assessed and collected" and in no wise concerns "costs" collected. The language used therein is plain and unambiguous.

Your attention is directed to a former opinion of this office addressed to you which appears in Vol. I, Opinions, Attorney General, 1921, at page 118, the syllabus of which reads:

"provisions of Section 3056 G. C. are applicable to fines assessed and collected by the municipal court of Toledo."

The recent amendment of Section 1579-314, supra, would in no wise affect the conclusions therein reached.

Answering your inquiry specifically, I am of the opinion that:

1. The provisions of Section 3056, General Code, are applicable to fines and penalties assessed and collected by the Municipal Court of Toledo.

2. The Lucas County Law Library Association is not entitled to any percentage of "costs" collected in state cases prosecuted in the Municipal Court of Toledo.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2042.

MUNICIPAL COURT OF NEWARK—COUNCIL NO AUTHORITY TO FIX
COMPENSATION OF ACTING JUDGE.

SYLLABUS:

Assuming the constitutionality of Section 1579-371, General Code, providing for the appointment of an acting judge of the municipal court, Newark, Ohio, by the mayor of said city, the council of the city of Newark, for want of statutory authority so to do, has no power to fix the compensation of such acting judge or appropriate money to pay the same.

COLUMBUS, OHIO, May 1, 1928.

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

GENTLEMEN:—This is to acknowledge receipt of your recent communication requesting my opinion on a question therein stated. Your communication is as follows:

"Section 1579-371 G. C. (Section 5 of the Newark Municipal Court Act) provides that the mayor of the City of Newark may appoint an acting judge of the municipal court during the absence or disability of the regular judge.