

ished business of the adjourned meeting would be absorbed into the business of the next regular meeting. Furthermore it is an accepted principle of parliamentary law that any number of members less than a quorum has only the power to adjourn a meeting to a future date and no power to transact any business whatever. In the present case, where a quorum was not present at the adjourned meeting and an attempt was made to again adjourn beyond the date of the next regular meeting such attempted adjournment was merged into the next regular meeting. Consequently, the adjourned meeting was never held, and it is my opinion that the members of council absent from the original regular meeting but present at the adjourned meeting which never took place, cannot be counted as being present at the original meeting.

The practices here under consideration, constitute a perfectly obvious circumvention of the charter provision which penalizes members of council for being absent from council meetings. However unconscionable these practices may be, I can only pass upon the question of whether or not such practices are within the power of council under the present city charter. If the citizens of the City of Cleveland object to a continuation of these practices their remedy lies not in the courts but in the power to amend their charter.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

241.

MUNICIPAL COURT—EAST LIVERPOOL—NO POWER OF
FIXING ATTORNEY FEES—BY RULE.

SYLLABUS:

The judge of the Municipal Court of East Liverpool has no power to fix attorney fees in cases in his court by rule of court.

COLUMBUS, OHIO, March 12, 1937.

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

GENTLEMEN: I acknowledge receipt of your communication of recent date in which you request the opinion of this office upon the following proposition of law:

“Do the statutes creating the Municipal Court of the City of East Liverpool, as found in Sections 1579-870 to 1579-872, General Code, authorize the clerk of that court to deduct the sum of \$15.00 from payment by each applicant for trusteeship, and do they authorize him to pay such sum, when so deducted, to the attorney as his fee for filing the application?”

Sub-section 6 of Section 1579-870, General Code of Ohio, provides as follows:

“(6) The municipal court shall have jurisdiction upon the application of a debtor, to appoint a trustee to receive that portion of the personal earnings of the debtor, which, as against claims for necessities, is not exempt from execution, attachment, or proceedings in aid of execution, and such additional sums as the debtor may voluntarily pay or assign to said trustee, and to distribute the money pro rata among creditors having claims for necessities against the debtor at the time of application.”

Section 1579-871, General Code of Ohio, provides as follows:

“When a trustee shall be so appointed, no proceeding in attachment, aid of execution or otherwise to subject the personal earnings of the debtor to payment of claims for necessities shall be brought or maintained by any creditor having a claim against such debtor at the time of the application herein, before any justice of the peace or in any court, so long as at least fifteen per centum of the personal earnings of such debtor is paid to the trustee at regular intervals, as fixed by the court; provided, however, this provision shall not be construed to prohibit creditors from recovering judgments against the debtor nor to prohibit levy, under a writ of attachment or execution, upon any other property which is not exempt from execution.

The maintaining of a proceeding in attachment, aid of execution or otherwise, in violation of the foregoing provision, may be prevented by a writ of prohibition, in addition to all other remedies provided by law.”

Section 1579-872, General Code of Ohio, provides as follows:

“The municipal court may provide, by rule, for notice to creditors, the authentication and adjudication of claims, the time and manner of payment to the debtor, the distribution of the funds, the bond and the trustee, if required, and for all

other matters necessary or proper to carry into effect the jurisdiction conferred by this section. The court may designate the clerk of the municipal court, trustee, without additional compensation and his official bond shall be construed as conditioned upon the fulfillment of the trust and no additional bond shall be required."

Section 1579-900, General Code of Ohio, provides as follows:

"In all actions where the amount claimed by either party or the appraised value from the property sought to be recovered does not exceed two hundred dollars and except as herein provided in all actions where the municipal court has jurisdiction the same as that of a justice of the peace, the fees and costs shall be the same and taxed in the same manner as is now or may hereafter be provided for such actions before a justice of the peace. In all other actions the fees and costs shall be the same and taxed in the same manner as is now or may hereafter be provided for such actions in the court of common pleas. In criminal cases all fees and costs shall be the same as fixed with respect to police courts. The judge of the municipal court may by rule of court, provide for all cases not covered by this act, a standard of fees and costs not in excess of those provided by general laws. All payments and deposits for costs and jury shall be refunded when the same shall have been paid by the losing party."

The sections just cited must contain the authority, if there be authority, for the collection and payment of the \$15.00 in question.

No schedule of fees is provided for in trusteeships of the character defined by Sections 1579-870 to 1579-872, inclusive, General Code of Ohio, hence the Judge of the Municipal Court may provide by rule of court a standard of fees and costs in such cases not in excess of those provided by general laws.

While your submitted question does not contain the fact, your enclosure from the Judge of the Municipal Court of East Liverpool makes it plain that this \$15.00 attorney fee was fixed by rule of Court, hence your inquiry resolves itself into one question, namely, has the Judge of the Municipal Court of East Liverpool, jurisdiction and authority to fix attorney fees in such cases?

The Municipal Court of East Liverpool is declared to be a Court of record by force of Section 1579-867, General Code of Ohio, but it is a court of limited jurisdiction. It has no general equity powers. I find the only grant of equity jurisdiction to the Municipal Court of

East Liverpool to lie in Sections 1579-869 and 1579-870, General Code of Ohio, and these grants are special.

It has always been the law in Ohio that a court of equity has the inherent power to allow counsel fees to a party who brings into court a fund to be enjoyed in part by others. *Mason vs. Alexander*, 44 O. S., 318.

Courts of law have no power to tax attorney fees unless the power is conferred by express statutory authority. *Koelble, Admr. vs. Runyan*, 25 O. App., 426, fifth branch of syllabus.

Courts have no authority to make rules allowing attorney fees in the absence of a statute to that effect, as by so doing they are invading the province of the legislature.

I am of the opinion that the allowance herein referred to is without warrant in law.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

242.

TOWNSHIP TRUSTEES, CLERK—EXPENSES—CONVENTION
OF TOWNSHIP TRUSTEES AND CLERKS—FUNDS FROM
WHICH PAID.

SYLLABUS:

It is not a violation of law for the Township Trustees of a township to allow and pay the expenses of the Township Clerk incurred while in attendance at the annual convention of The Association of Township Trustees and Clerks of Ohio, held in Columbus. Until a specific fund is designated by law out of which to pay such expense, it should be paid from the general fund of the township.

COLUMBUS, OHIO, March 12, 1937.

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

GENTLEMEN: I acknowledge receipt of your communication of recent date with enclosures.

I note that you request the written opinion of this office upon the following statement of fact, viz: