

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."

Sec. 2978. "Each probate judge, auditor, treasurer, clerk of courts, sheriff, surveyor and recorder, shall charge and collect the fees, costs, percentages, allowances and compensation allowed by law, and shall give to the person making payment thereof an official receipt in manner and form as may be prescribed by the bureau of inspection and supervision of public offices."

These sections clearly indicate that all such fees and costs are to be received and collected for the sole use of the treasury of the county where they are collected.

Consistent with these provisions are those appearing in Sections 2981 and 2987, General Code, that all deputies, assistants, employees and clerks appointed and employed under the certain county offices enumerated in Sections 2977 and 2978, *supra*, shall be paid from the county treasury as provided for by these sections.

In view of these very plain statements of the law it is my opinion that the \$1.25 fee provided for in Section 5762, General Code, is not to be retained by the auditor as personal compensation, but must be collected and paid over with the other fees and charges of this office to the county treasurer as required under Section 2977, General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

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MUNICIPAL COURT CLERK—CLERK—ASSIGNMENT OF INTEREST DEPOSITORY FUNDS—PUBLIC MONEY* TRUST FUND—CITY TREASURER—FINDING AGAINST CLERK.

SYLLABUS:

1. *A municipal court clerk has no authority under Section 11728-1,*

General Code, to accept or require an assignment of a percentage of the debtor's total indebtedness either to pay expenses or to provide himself with compensation for his services. Likewise, he has no authority under this section to accept for his personal use an assignment of the interest on depository funds of the debtor.

2. *Where money has been received under an assignment made pursuant to Section 11728-1, General Code, by a municipal court clerk, such money is public money and a finding against the clerk for the recovery of all such money may be properly returned in favor of the city treasurer who is to hold it in a special trust fund until claimed by its rightful owner as provided for under Section 286, General Code.*

COLUMBUS, OHIO, March 4, 1937.

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

GENTLEMEN: I am in receipt of your recent communication which reads as follows:

"Our Examiner's letter dated August 29, 1936, which sets forth a statement of fact in regard to assignment in 'trusteeship accounts' in the Municipal Court at Alliance, is inclosed herewith, and the form of assignment is quoted as follows:

'We, the undersigned, hereby assign to John L. Russell an amount equal to 2% of our total indebtedness to be paid toward the necessary expense of the trusteeship, such as postage, and notices, necessary book-keeping supplies, notary fees and any other necessary expense. Said 2% to be deducted from the amounts paid by us to the Trustee. Also any interest collected by Trustees on funds in bank are hereby assigned to him.'

Under the terms of such assignment, the clerk has collected for his personal use the amounts equal to 2% of the debtors' funds collected by him and also the interest on certain depository funds.

QUESTION. Is it legal for the clerk of said Municipal Court to collect the items above referred to and retain the designated amounts for his personal use, and if the answer to this question should be in the negative, would our Examiner be authorized to return a finding for recovery in favor of the City for any amounts that may be illegally retained by the clerk?"

Section 11728-1, General Code, which provides for these special trusteeships, reads in part as follows:

“Any person upon whom a demand has been made in accordance with Section 10272 of the General Code of Ohio may apply to any justice of the peace or judge of a municipal court within this state, in whose jurisdiction he resides, for the appointment of a trustee to receive that portion of the personal earnings of the debtor 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 file with said application a full, accurate and complete statement, under oath, of the names of his unsecured creditors with liquidated claims, their addresses, and amount due and owing to each for work or labor, or for necessaries. Upon such application and filing, such justice of the peace or judge shall appoint a trustee to distribute such funds to said unsecured creditors of the debtor at the time of said application and filing . . .

If application for a trustee be made to a judge in a municipal court such judge shall designate the clerk of such municipal court to act as trustee and said clerk shall serve 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. If application for a trustee be made to a justice of the peace, such justice may receive as full compensation for his services as justice of the peace therein, two per cent of the total amount of the debtor's payment on claims as herein provided, and may appoint any suitable person to act as trustee. Such trustee shall give bond as the justice shall fix, conditioned upon the fulfillment of the trust, to be paid for by the debtor applicant, and said trustee shall receive as full compensation for his services as such trustee, two per cent of the total amount of the debtor's payment on claims as herein provided, all said compensation to be paid before distribution to creditors as above provided.”

The intent of the legislature is clearly and definitely expressed in the words of this section and there is in consequence no necessity for interpretation or construction. The law expressly provides in mandatory language that the clerk, “shall serve without additional compensation,” and that his official bond shall be construed as conditioned upon the fulfillment of the trust. Further indication that the legisla-

ture definitely intended there should be no costs or compensation for the services rendered by the clerk under this section appear in the express provisions made for compensation where the justices of the peace or trustees appointed by them render such services. In view of such language and the general application of *expressio unius est exclusio alterius*, the clerk can not legally receive compensation by any direct or indirect plan for services rendered under Section 11728-1, General Code.

It is generally conceded by the authorities upon Ohio law that the duties of a court clerk are imposed upon him by law and not by any theory of contractual relationship with those whom the court serves. It would appear, then, that unless the authority to make charges for costs and expenses has been expressly conferred, the clerk is without power to prescribe for these matters.

However, before reaching a conclusion upon this subject, I have considered the language of this section in respect to assignments. The following words appear:

“Any person . . . may apply . . . for the appointment of a trustee to receive that portion of the personal earnings . . . not exempt . . . and such additional sums as the debtor may volunteer to pay or assign to the said trustee . . .”

Under these terms the clerk has no authority to accept any assignment to provide funds for costs or for himself since the assignment made under this section is made for the purpose of obtaining additional funds for the trustee to distribute to unsecured creditors of the debtor. No intent is shown which would permit any other understanding. Hence an assignment which permits the clerk to collect two percent of the debtor's indebtedness for expenses and the interest on depository funds for himself is not an assignment authorized by Section 11728-1, General Code.

Section 286, General Code, provides in part as follows:

“The term ‘public money’ as used herein shall include all money received or collected under color of office, whether in accordance with or under authority of any law, ordinance or order, or otherwise, and all public officials shall be liable therefor. *All money received under color of office and not otherwise paid out according to law, shall be due to the political subdivision or taxing district with which the officer is connected and shall be by him paid into the treasury thereof to the credit of a trust fund, there to be retained until claimed by the lawful owner; if not claimed within a period of five*

years after having been so credited to said special trust fund, such money shall revert to the general fund of the political subdivision where collected."

The municipal court of Alliance which is the court here in question was organized under Sections 1579-195 et seq., General Code. Examining Sections 1579-206, 1579-220, 1579-221, and 1579-222, we find that these provisions relating to this court provide respectively that the municipal judge shall make his annual report to the city council; that the municipal clerk shall give bond to the City of Alliance; that the clerk shall deposit moneys received through court with the city treasury and report on the first Monday of each court term to the city auditor; and finally that all unclaimed moneys shall be paid by the municipal clerk to the city treasurer on the first of each year. These provisions leave no doubt that the City of Alliance is the political subdivision with which the municipal court clerk is connected. Money collected under the assignment in question being public money, the examiner of the Bureau of Inspection and Supervision of Public Offices would be authorized under Section 286, General Code, to return a finding for the recovery of all such money against the municipal court clerk in favor of the city treasurer, who under this section is to hold such money in a special trust fund for its rightful claimants.

In view of these facts, it is my opinion that a municipal court clerk has no authority under Section 11728-1, General Code, to accept or require an assignment of a percentage of the debtor's total indebtedness either to pay expenses or to provide himself with compensation for his services. Likewise he has no authority under this section to accept for his personal use an assignment of the interest on depository funds of the debtor. Therefore, where money has been received under an assignment made pursuant to Section 11728-1, General Code by a municipal court clerk, a finding against him for the recovery of all such money may be properly returned by an examiner of the Bureau of Inspection and Supervision of Public Offices, in favor of the city treasurer, who under Section 286, General Code, is to hold it in a special trust fund for the lawful owners.

Respectfully,

HERBERT S. DUFFY,
Attorney General.