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1. LIBRARY, LAW, ASSOCIATION, COUNTY — SECTION 3056 G. C. — PROVISION FOR APPORTIONMENT BY COUNTY AUDITOR OF AMOUNT OF FINES AND FORFEITED MONIES TO BE PAID TO COUNTY LAW LIBRARY ASSOCIATION — APPORTIONMENT TO SEVERAL MUNICIPAL POLICE OR MAYOR'S COURTS — LIMITATION, \$7,500.00 — NO SPECIFIC LIMITATION AS TO AMOUNT APPORTIONED TO ANY ONE OF SUCH COURTS — LIMITATION, \$3,000.00 REFERS TO MAXIMUM AMOUNT ANY ONE COURT SHALL BE REQUIRED TO PAY IN ANY ONE CALENDAR YEAR.
2. TRUSTEES OF LAW LIBRARY ASSOCIATION — REQUIRED TO MAKE ANNUAL REFUND TO TREASURERS OF POLITICAL SUBDIVISIONS FROM WHICH BALANCE RECEIVED — NOT LESS THAN 90% OF ANY UNENCUMBERED BALANCE REMAINING FROM PRECEDING YEAR — COUNTY AUDITOR SHALL CERTIFY AMOUNT OF BALANCE TO TRUSTEES OF ASSOCIATION — SECTION 3058 G. C.
3. APPORTIONMENT OF REFUND BASED ON AMOUNT ACTUALLY PAID IN CASH BY EACH POLITICAL SUBDIVISION NOT UPON APPORTIONMENT MADE BY COUNTY AUDITOR.
4. COMPUTATION OF REFUND — RECEIPTS AND EXPENDITURES — DISPOSITION OF UNPAID BALANCE.
5. TRUSTEES OF LAW LIBRARY ASSOCIATION — RIGHT TO ENFORCE PAYMENT DUE FROM SUBDIVISION TO COUNTY LAW LIBRARY ASSOCIATION — NO OTHER OFFICER HAS ANY SUCH RIGHT OR DUTY — SECTION 3056 G. C.

SYLLABUS:

1. Section 3056 General Code, providing for an apportionment by the county auditor to the several municipal, police or mayor's courts in a county of the amount of fines and forfeited monies to be paid to the county law library association, provides for a total limitation of \$7,500.00 but does not contain any specific limitation as to the amount that may be apportioned to any one of such courts. The limitation of \$3,000.00 contained in said section refers to the maximum amount that any one of said courts shall be required to pay in any one calendar year.

2. Under the provisions of Section 3058 General Code, the trustees of a law library association are required to make a refund annually to the treasurers of the political subdivisions from which such balance was received of not less than 90 per cent of any unencumbered balance on hand from the preceding year but are not required to make such refund unless and until the county auditor shall have certified the fact of such balance and the total amount thereof to the trustees of the association.

3. The apportionment of the refund required by Section 3058 General Code, is to be based upon the amount actually paid in by each political subdivision and not upon the apportionment made by the county auditor.

4. The refund required to be made by Section 3058 General Code in any year is based solely upon receipts and expenditures for the preceding year and in case a municipality has not paid the full amount of its apportionment in a given year the unpaid balance is not to be considered in computing the amount of its refund for a succeeding year.

5. The right to enforce payment due from a subdivision to a county law library association under Section 3056 General Code, rests in the trustees of the law library association and no other officer has any right or duty in the premises.

Columbus, Ohio, November 30, 1944

Hon. William G. Wickens, Prosecuting Attorney
Elyria, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

"I hereby respectfully solicit your opinion upon six questions hereinafter set forth and based upon the following statement of facts:

Under the provisions of Section 3056 G. C. et seq., the Auditor of Lorain County made and fixed for each of the years of 1940, 1941, 1942 and 1943, an apportionment of the amounts

to be paid to the Lorain County Law Library Association out of the fines collected in the Municipal Court of the City of Lorain and in the Mayor's courts of the various municipalities throughout the county, the aggregate of the amount so apportioned being \$7,500.00.

In the apportionment of each of the four years, the County Auditor fixed an amount in excess of \$3,000.00 for the City of Elyria. For the year 1940 he apportioned to the City of Elyria the sum of \$3,208.56; for the year 1941, \$3,800.51; for the year 1942, \$3,724.44; and for the year 1943, \$4,125.96.

During the four years referred to, only one municipality, the Village of Oberlin, paid in full the amounts apportioned to it by the County Auditor for each of the four years. The Municipal Court of Lorain paid only part for the years 1940 and 1941 and in full for 1942 and 1943 of the amounts apportioned to it. Certain other municipalities have paid only a part of their respective apportionments and seven municipalities have paid nothing. In 1940 the City of Elyria paid to the Trustees of the Law Library Association the sum of \$1200.00 and the sums of \$1,000.00 each in the years 1941, 1942 and 1943.

For each of the four years the properly verified detailed statement of the Trustees to the Auditor of the county has shown a balance on hand after deductions of expenditures from the actual amounts received. The County Auditor has never certified such fact to the Trustee Association and the Trustees have never directed their Treasurer to make any refunds to the political subdivisions from which such balance was received.

I enclose herein a detailed statement covering the years referred to, showing the amounts apportioned, the amounts paid, the amounts expended by the association and the amounts to be refunded as computed by the Bureau of Inspection and Supervision of Public Offices at the request of the Trustees. You will note that the examiner, in computing the amounts to be refunded, has apparently followed your opinion appearing in 1941 OAG No. 3996.

On the basis of the foregoing statement of facts, I desire your opinion on the following questions:

1. Does the excessive apportionment as to the City of Elyria make the apportionments as to the other municipalities erroneous and invalid?

2. Should the Trustees of the Law Library Association make any refunds to the political subdivisions from the unexpended yearly balances in the absence of a certification from the County Auditor?

3. Should the refund to the municipalities be based upon the amount apportioned to each of them by the County Auditor, or should the refund be based upon the amount actually paid in by each municipality?

4. If the refund is to be based on the apportionment rather than what was actually paid in, what would be the proper method of computing the refund?

5. In the case of a municipality paying only a part of its apportionment for one year, and the full amount of its apportionment for another year, is such municipality entitled to any refund at this time as to the latter year until it has first paid the balance of its apportionment for the former year? Or should any refunds due it for either year be applied on the balance due from it on its apportionment for the prior year?

6. Who has the duty and right to attempt to force payment from those subdivisions which have not paid any of their apportionments?

I feel that some of these questions have been considered by you in the opinion referred to above and that others have been partially covered in the cases of Warren County Law Library Association vs. Parker, 22 O. O. 170, 8 O. Supp. 83; and Greenville Law Library Association vs. Taylor, 21 O. O. 238, 35 Ohio Law Abstract 30, 6 O. Supp. 348. However, the Trustees of the Lorain County Law Library Association desire that all of these questions be expressly answered in this opinion and hence your consideration thereof is respectfully invited."

The basis for the apportionment to the several political subdivisions of fines and other moneys which are to be paid over to the trustees of a county law library association is found in Section 3056 of the General Code, and inasmuch as all parts of that section seem to have some bearing on the questions which you raise, I quote it in full:

"All monies collected by a municipal corporation, accruing from fines, penalties, forfeited recognizances taken for appearances, by a municipal court, police court or mayor's court for offenses and misdemeanors brought for prosecution in the name of a municipality under a penal ordinance thereof, where there is in force a state statute under which the offense might be prosecuted, or prosecuted in the name of the state, except a portion thereof, which plus all costs collected monthly in such state cases, equals the compensation allowed by county commissioners to the judges of the municipal court presiding in police court, clerk and prosecuting attorney of such court in state cases, shall be retained by the clerk of such municipal, police, or mayor's court, and be paid by him forthwith, each month, to

the trustees of such law library association in the county in which such municipal corporation is located, but the sum so retained and paid by the clerk of said municipal, police, or mayor's court to the trustees of such law library association shall in no month be less than 25% of the monies arising from such fines, penalties, and forfeited deposits, forfeited bail bonds and forfeited recognizances, taken for appearances, in that month, without deducting the amount of the allowance of the county commissioners to said judge, clerk and prosecutor.

Provided, however, that the total amount paid hereunder in any one calendar year by the clerks of all municipal, police and mayor's courts in any one county to the trustees of such law library association shall in no event exceed \$7,500.00 and the maximum amount paid by any one of such courts shall in no event exceed \$3,000.00 in any one calendar year. The maximum amount to be paid hereunder by each such clerk shall be determined by the county auditor in December of each year for the next succeeding calendar year, and shall bear the same ratio to \$7,500.00 as the total fines, costs and forfeitures received by the corresponding municipality, bear to the total fines, costs and forfeitures received by all the municipalities in the county, as shown for the last complete year of actual receipts, on the latest available budgets of such municipalities; and payments in the full amounts hereinbefore provided shall be made monthly by each clerk in each calendar year until the maximum amount for such year shall have been paid. When such amount, so determined by the auditor, shall have been paid to the trustees of such law library association, then no further payments shall be required thereunder in that calendar year from the clerk of such court."

It will be observed that the duty is placed on the county auditor annually to apportion to the clerks of the various municipal, police or mayor's courts an amount which shall not exceed \$7,500.00 in the aggregate and prorate it to the several clerks of the courts named in the law in proportion to the total fines, costs and forfeitures received by each municipality as shown for the last complete year of actual receipts, on the last available budgets of such municipalities. There are certain limitations in the statute as to the amounts which the clerks of such courts shall retain from the fines, penalties and forfeited deposits, etc. which limitations, however, it is not necessary for the purpose of this opinion, to discuss. It is sufficient to say that the law does not put upon the municipality the burden of paying all of the amount apportioned to it by the county auditor but only to the extent of the fines and other moneys collected and available for payment to the law library association under the limitations set out. In other words, the apportionment referred to

does not create an absolute liability in the amount of the apportionment, but the statute does make the payment of available moneys mandatory on the part of each municipality up to the maximum fixed by the auditor.

It will be noted further that the amount *to be paid* by any one of such courts shall in no event exceed \$3,000.00 in any one calendar year. This limitation however by its terms, relates not to the amount which the auditor may apportion to a municipality, but to the amount which a clerk of any of the courts in question shall pay.

Accordingly, it appears to me that your first question in assuming that the apportionment made during the four years mentioned in your letter to the City of Elyria, was excessive, is based on an erroneous assumption. Assuming that the apportionment made by the county auditor was mathematically correct and was based on the receipts for the preceding year, I can not find that there was any excessive apportionment as to the City of Elyria, and therefore there could be no question on that ground as to the validity of the apportionment made to the other municipalities.

Your other questions involve also the consideration of Section 3058 General Code, which reads as follows:

“On the first Monday of each year, the trustees of the association shall make a detailed statement to the auditor of the county, verified by the oath of the treasurer of the association, of the amount of the fines and penalties so received, and of the money expended by the association.

In the event the total amount received under sections 3056, 3056-1, 3056-2 and 3056-3 of the General Code during the preceding calendar year covered by such report exceeds the expenditures during the same period, the county auditor shall certify such fact to the trustees of the association, who shall thereupon direct the treasurer of the law library association to refund or repay, pro rata to the treasurers of the political subdivisions from which such balance was received, not less than 90 per cent of any unencumbered balance on hand from the preceding year.”

Taking up your second question, it should be noted that Sections 3056-1, 3056-2 and 3056-3, General Code, relate to fines, etc. collected by justices of the peace and clerks of common pleas and probate courts, and to monies collected in connection with prosecutions for violations of

the liquor control act, and state traffic laws. These, it will be observed, do not fall within the scope of Section 3056 supra, but do go to make up the aggregate of receipts which are to be considered in making the refund under the provisions of Section 3058, General Code.

Section 3058 as it will be observed, requires the trustees of the law library association on the first Monday of each year to make a detailed statement under oath to the auditor of the county, of the amount of fines and penalties received and of the money expended by the association during the preceding year. In the event that the total amount received under Section 3056 from the courts of the municipalities, under Section 3056-1 from the justices of the peace, under Section 3056-2 from courts of common pleas and probate courts, and under Section 3056-3 arising from prosecutions under the acts specially named, exceed the expenditures of the association during the same period, then the county auditor is required to certify such fact to the trustees of the association, who shall thereupon direct the treasurer of the association to refund or repay pro rata to the treasurers of the political subdivisions from which such balance was received, not less than 90 per cent of any unencumbered balance on hand from the preceding year.

This section clearly places the initial duty looking to such refund upon the county auditor upon the receipt of the annual statement from the treasurer of the association. It might be argued that when the trustees make their report of receipts and expenditures to the county auditor they will know the amount of their unencumbered balance as certainly as when the auditor in turn certifies such fact back to the trustees. The auditor, however, has in his office all the facts and figures necessary to an accurate determination of the apportionment of the refund, and doubtless the law contemplates that the entire proceeding should become a matter of record in his office. Whatever may have been the purpose of the legislature in setting out this procedure, it is perhaps useless to speculate. It appears to me, however, that the law is to be followed as laid down and that until the county auditor certifies, as required, to the trustees of the association, no duty rests upon the trustees to make the refund.

Coming to your third question, whether the amount to be refunded to each of the municipalities is to be based upon the amount apportioned

to each of them by the county auditor or upon the amount actually paid in by each municipality, that question appears to have been expressly answered in the opinion to which you refer in your letter, which was rendered by me on July 18, 1941, being Opinion No. 3996 and found in 1941 Opinions, Attorney General, p. 563, where it was held:

“1. Annual refunds by county law library associations, under the provisions of Section 3058, General Code, should be made to the treasurers of the contributing political subdivisions pro rata on the basis of actual payments by such subdivisions, whether made on time or after the expiration of the year in which due.”

Substantially the same holding was made in the case of Warren County Law Library Association vs. Parker, 22 O. O. 170, decided by the Common Pleas Court of Warren County, December 14, 1941. The seventh branch of the syllabus in that case reads as follows:

“The ninety per cent of any unencumbered balance on hand from the preceding year, referred to in Section 3058, General Code, is applicable only to the amount of money actually received by the law library association during the preceding calendar year, and the date of the assessing or paying of the fine to the municipality has no connection therewith or control over the repayment by the association.”

Your fifth question suggests that a municipality which pays only a part of its apportionment for one year and the full amount of its apportionment for another year might not be entitled to a refund as to the latter year until it has first paid the balance of its apportionment for the former year. It should be borne in mind in this connection, that there is no absolute obligation on the part of the municipality to pay the full amount of the *apportionment*. The apportionment merely fixes a maximum and the obligation to pay depends upon the amount of fines, etc. collected. Furthermore, I do not find anything in the law which suggests that the transactions from one year to another are to be considered as an open account. Apparently, the law contemplates that each year's business shall stand on its own footing. If it should seem that there is any unfairness in the provisions of this statute, it must be for the legislature to correct.

In answer to your sixth question, as to who has the duty and right to attempt to force payment from those subdivisions which have not paid

all or any of their apportionments, it appears to me that the obligation to make the payments required by the law having been expressly imposed by the legislature upon the various subdivisions through their respective clerks, and the right to receive the money having been expressly given to the trustees of the law library association, a right to enforce payment by legal action would vest in the association. If the association has been incorporated, then it could sue as such. If unincorporated, the trustees of the association as such would have the right of action. There is no duty placed upon the prosecuting attorney or any other officer to assist in making collection. In either event their action would not be necessarily for the amount of the apportionment but for the amount realized from sources indicated and applicable to the payment as provided by law. So far as the duty to enforce collections is concerned, I can not see that the right to enforce payment carries with it a duty to do so. Nothing in the statute would suggest any such duty resting upon the trustees of the association.

Specifically answering your several questions it is my opinion:

1. Section 3056 General Code, providing for an apportionment by the county auditor to the several municipal, police or mayor's courts in a county of the amount of fines and forfeited monies to be paid to the county law library association, provides for a total limitation of \$7,500.00 but does not contain any specific limitation as to the amount that may be apportioned to any one of such courts. The limitation of \$3,000.00 contained in said section refers to the maximum amount that any one of said courts shall be required to pay in any one calendar year.

2. Under the provisions of Section 3058 General Code, the trustees of a law library association are required to make a refund annually to the treasurers of the political subdivisions from which such balance was received of not less than 90 per cent of any unencumbered balance on hand from the preceding year but are not required to make such refund unless and until the county auditor shall have certified the fact of such balance and the total amount thereof to the trustees of the association.

3. The apportionment of the refund required by Section 3058 General Code, is to be based upon the amount actually paid in by each political subdivision and not upon the apportionment made by the county

auditor.

4. The refund required to be made by Section 3058 General Code, in any year is based solely upon receipts and expenditures for the preceding year and in case a municipality has not paid the full amount of its apportionment in a given year the unpaid balance is not to be considered in computing the amount of its refund for a succeeding year.

5. The right to enforce payment due from a subdivision to a county law library association under Section 3056 General Code, rests in the trustees of the law library association and no other officer has any right or duty in the premises.

Respectfully,

THOMAS J. HERBERT

Attorney General