

4506.

APPROVAL, NOTES OF UNION CITY VILLAGE SCHOOL DISTRICT, DARKE COUNTY, OHIO, \$2,486.00.

COLUMBUS, OHIO, August 5, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4507.

LIQUOR CONTROL ACT—FINES COLLECTED BY MUNICIPAL COURT FOR VIOLATIONS THEREOF NOT PAYABLE TO COUNTY LAW LIBRARY ASSOCIATION.

SYLLABUS:

No part of the fines collected by a municipal court for violations of the Liquor Control Act should be considered in computing the amount that a municipal court should pay to a county law library association under the provisions of Section 3056, General Code.

COLUMBUS, OHIO, August 5, 1935.

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

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

“Our examiners have encountered difficulty in the audit of municipal courts as to the correct amount due the Law Libraries by the repeal of the Crabbe Act and the passage of the Liquor Control Act, which provides for equal distribution of fines collected between the state and the county treasuries.

Assuming the Law Library is to receive a minimum of fifteen percent each month of state fines and penalties collected, we have been unable to determine whether the fines collected under the provisions of the Liquor Control Act shall be included with other state fines collected, in determining the share for all library purposes, and if the fines collected under this act should be used, whether the entire fine should be taken into consideration, or only the share payable to the county treasury.

This question arises by reason of the language used in the first

branch of the syllabus of Attorney General's Opinion No. 1436, dated January 21, 1930, wherein it is said in part as follows:

'Under the provisions of section 3056, G. C., as amended by the 88th General Assembly, municipal courts are required to turn over to the County Law Library association all fines and penalties assessed and collected for offenses and misdemeanors prosecuted in the name of the state after deducting a portion thereof equal to the compensation allowed by the County Commissioners to the judges, clerk and prosecuting attorney of such court, *excepting such fines and penalties as the law specifically provides shall be paid into some definite and specific treasury.* * * *'

Of course, the Liquor Control Act specifically provides a definite and specific treasury for the fines collected thereunder. * * *.

Will you kindly give us your opinion as to the proper method to be used in making payment to the Law Library Association in respect to fines collected under the Liquor Control Act (section 6064-54 and 59), that is, should such fines be used on a one hundred percent basis, a fifty percent basis, or not be used at all?"

Section 3056, General Code, referred to in your letter reads in full as follows:

"All fines and penalties assessed and collected by a municipal or 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 commissioners to the judge of the municipal court presiding in police court, clerk and prosecuting attorney of such court in state cases shall be retained by the clerk and be paid by him monthly to the trustees of such law library associations, but the sum so retained and paid by the clerk of said municipal or police court to the trustees of such law library association shall in no month be less than 15 per cent of the fines and penalties collected in that month without deducting the amount of the allowances of the county commissioners to said judges, clerk and prosecutor.

In all counties the fines and penalties assessed and collected by the common pleas court and probate court for offenses and misdemeanors prosecuted in the name of the state, shall be retained and paid monthly by the clerk of such courts to the trustees of such library association, but the sum so paid from the fines and penalties assessed and collected by the common pleas and probate courts shall

not exceed five hundred dollars per annum. The money so paid shall be expended in the purchase of law books and the maintenance of such association.

It is provided, however, that not to exceed five hundred dollars per annum of the county's share and not to exceed one thousand dollars per annum of the municipality's share of the fines and penalties collected by the common pleas, probate, or a municipal or police court for the violation of the prohibition laws shall be subject to the provisions of this section, and provided further that the total amount paid hereunder in any one calendar year by the clerk of any municipal or police court to the trustees of such library association shall in no event exceed six thousand dollars per annum; and when that amount shall have been so paid to the trustees of such law library association, in accordance with the foregoing provisions of this section, then no further payment shall be required hereunder, in that calendar year, from the clerk of such court."

Section 3056, General Code, was last amended in 1931 (114 O. L. 89). Section 6064-59, General Code, also referred to in your letter was enacted in 1933 (115 O. L., Pt. II, 118). This section reads as follows:

"Money arising from fines and forfeited bonds collected under any of the penal laws of this state relating to the manufacture, importation, transportation, distribution or sale of beer or intoxicating liquor shall be paid one-half into the state treasury to the credit of the general revenue fund therein and one-half into the treasury of the county where the prosecution is held."

As to any conflict between these sections, section 6064-59, General Code, inasmuch as it is later in time and deals with a special subject matter, would control over Section 3056, General Code. In the case of *Cincinnati vs. Holmes* 56 O. S., 104, it was stated by Minshall, J. at page 115:

"I know of no rule of construction of statutes of more uniform application than that later or more specific statutes do, as a general rule, supersede former and more general statutes, so far as the new and specific provisions go."

In the 1930 opinion quoted in your letter it was pointed out that municipal courts are not required to pay over any fines or penalties to the county law library association, which fines the law specifically provides should be paid into definite and specific treasuries. This opinion was based upon an earlier opinion to be found in Opinions of the Attorney General for 1929, Vol. II, page 1434. The syllabus of this opinion reads in part as follows:

"1. Section 3056 of the General Code, as amended by the 88th General Assembly (113 O. L. 249), which became effective July 21, 1929, is applicable to all municipal and police courts existing in Ohio on the effective date of said act.

2. Said section, as amended, does not repeal special provisions requiring fines and penalties arising under specific laws to be paid into definite and specific treasuries, such as collections of such fines and penalties for violation of agriculture law, and many other sections. * * *

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A somewhat analogous question to the one presented in your letter was passed upon in an opinion to be found in Opinions of the Attorney General for 1927, Vol. II, page 877. The syllabus of that opinion reads as follows:

"A clerk of courts is without authority to pay to the trustees of a county law library association, any part of the county's portion of fines imposed and collected by the Common Pleas Court for violations of the Crabbe Law (Sections 6212-13 et seq., General Code) and in accordance with the provisions of Section 6212-19, General Code, such fines must be paid one-half into the state treasury to the credit of the general revenue fund and one-half to the county where the prosecution is held."

This opinion pointed out that Section 6212-19, General Code, was a later enactment than Section 3056, General Code, and since it dealt with a specific subject matter, its provisions control over those of Section 3056, General Code. After the rendition of this opinion the legislature amended Section 3056, General Code, so that the provisions of Section 6212-19, General Code, relative to the disposition of such fines and penalties were repealed by implication. See Opinions of the Attorney General for 1929, Vol. II, page 1434. The second branch of the syllabus of that opinion reads in part as follows:

"2. * * * The section does repeal by implication Section 6212-19 of the General Code, relating to the distribution of fines and penalties arising under prohibition laws, to the extent only that five hundred dollars, collected as the county's share, and one thousand dollars collected as the municipality's share, may be subject to the provisions of Section 3056, General Code.

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The above 1927 opinion was based to a large extent upon the reasoning

in the case of *State ex rel. Crabbe vs. Cleveland*, 115 O. S. 484. The first branch of the syllabus of that case reads as follows:

"1. Where it is evident that, by general law, the General Assembly was engaged in specific legislation upon a particular subject, an earlier special act, legislating generally upon the same and other subjects, is superseded by the later legislation upon that particular subject. In this case construing both acts in *pari materia*, it was manifestly the legislative purpose, by its adoption of the later enactment of 1920 (Section 6212-19, General Code; 108 O. L., pt. 2, 1184), to segregate all fines imposed for violation of criminal offenses under that act from the fines generally imposed and collected under the provisions of the Cleveland Municipal Court Act (Section 1579-41, General Code) adopted in 1915. And to the extent that the provisions of such municipal act relate to the disposition of fines imposed and collected for violation of the 'Crabbe Act', it is inconsistent with and is superseded by the later act specifically controlling that subject."

I also call your attention to the case of *State ex rel. vs. Henry*, 23 O. C. C., (N.S.) 451. The syllabus of that case reads as follows:

"1. Where two statutes are irreconcilable the one last enacted must prevail, and where there is a conflict between a general law and a special act the special act will prevail.

2. Section 3056, General Code, giving to law library associations fines and penalties collected in police courts in certain cases, does not give to such associations the fines and penalties collected in those cases in a municipal court, which has been created by special act, and to which jurisdiction of all cases formerly exercised by police courts has been transferred, where the act creating the municipal court expressly directs the clerk of that court to pay all moneys collected to the city treasurer."

After the decision in this last mentioned case Sections 3056 and 1579-41, General Code, were amended. However, the question passed upon in that case is similar to the one presented in your inquiry.

In the present inquiry the fines involved arise under the provisions of the Liquor Control Act. Section 6064-59, General Code, specifically provides that one-half of the fines collected under the penal laws of this state relative to the manufacture, importation, transportation, distribution or sale of beer or intoxicating liquor shall be paid into the treasury of the county where the prosecution is held. How then could the Clerk of a municipal court comply

with Section 3056, General Code, by paying part of such fines to the trustees of a law library association without going contrary to the express provisions of Section 6064-59, General Code? Section 6064-59, General Code, as before stated is later in time and deals with a specific subject. Had the legislature intended such fines to be considered in computing the amount to be given to a law library association, it would have been an easy matter to have so stated when Section 6064-59, General Code, was enacted. In view of the above decisions and opinions it would logically follow that the fines arising under the provisions of the Liquor Control Act should not be distributed to a county law library association.

Without further extending this discussion it is my opinion in specific answer to your question that no part of the fines collected by a municipal court for violations of the Liquor Control Act should be considered in computing the amount that a municipal court should pay to a county law library association under the provisions of Section 3056, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4508.

APPROVAL, BONDS OF BETHESDA VILLAGE SCHOOL DISTRICT, BELMONT COUNTY, OHIO, \$2,141.11.

COLUMBUS, OHIO, August 5, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4509.

APPROVAL, NOTES OF ROSCOE VILLAGE SCHOOL DISTRICT, COSHOCTON COUNTY, OHIO, \$4,774.00.

COLUMBUS, OHIO, August 5, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.