

2191.

APPROVAL, BONDS OF ARLINGTON VILLAGE SCHOOL DISTRICT, HANCOCK COUNTY, \$20,000.00.

COLUMBUS, OHIO, January 31, 1925.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2192.

APPROVAL, BONDS OF BEAVER RURAL SCHOOL DISTRICT, NOBLE COUNTY, \$40,000.00.

COLUMBUS, OHIO, January 31, 1925.

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

2193.

FEES IN STATE CASES—CHIEF OF POLICE OF CITY OF ALLIANCE CANNOT KEEP FEES FOR SERVICES PERSONALLY PERFORMED BY HIM.

SYLLABUS:

The Chief of Police of the City of Alliance cannot keep fees in state cases for services personally performed by him.

COLUMBUS, OHIO, February 2, 1925.

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

GENTLEMEN:—This will acknowledge receipt of your letter of January 22nd as follows:

“Section 1579-221, General Code, relating to the city of Alliance Municipal Court Act provides in part that the clerk of said court shall pay over to the proper parties all money received by him as clerk; he shall receive and collect all costs, fines and penalties; and shall pay the same quarterly to the treasurer of the city of Alliance and take his receipt therefor, etc.”

The synopsis of your opinion No. 2140 of January 12, 1925, reads:

“Section 4270, General Code, does not apply to fees earned by a mayor, marshal or chief of police in state cases but such fees should be paid to such officers for their personal use.”

“Question: In view of the provisions of section 1579-221, General Code, above referred to, is the chief of police of the city of Alliance entitled to fees in state cases for services which he personally renders?”

Section 1579-223, General Code, reads:

"The bailiff shall be appointed by the judge of such court and hold office during the pleasure of the court, and may be removed at any time by the judge of the municipal court. Every police officer of the city of Alliance shall be ex-officio a deputy bailiff of the municipal court and the chief of police shall assign one or more such police officers from time to time to perform such duties in respect to cases within the jurisdiction within said court as may be required of them by said court or the clerk thereof."

Section 1579-221, General Code, reads as follows:

"The clerk of the municipal court shall have power to administer oaths, and take affidavits, and to issue executions upon any judgment rendered in the municipal court, including a judgment for unpaid costs; he shall have power to issue and sign all writs, processes and papers issuing out of the court, and to attach the seal of the court thereto; shall have power to approve all bonds, recognizances and undertakings, fixed by any judge of the court or by law; shall file and safely keep all journals, records, books and papers belonging or appertaining to the court, record its proceedings and perform all other duties which the judge of the court shall prescribe. He shall pay over to the proper parties all moneys received by him as clerk; he shall receive and collect all costs, fines and penalties; and shall pay the same quarterly to the treasurer of the city of Alliance and take his receipt therefor, but money deposited as security for costs shall be retained by him pending the litigation; he shall keep a record showing all receipts and disbursements, which shall be open for public inspection at all time; and shall on the first Monday of each term of court make to the city auditor a report of all receipts and disbursements for the preceding term."

Section 1579-225, General Code, is as follows:

"In all actions where the amount claimed by either party or the appraised value of 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."

Section 4581, General Code, reads:

"The fees of the police clerk and judge shall be the same as those allowed justices of the peace, and the fees of the marshal, chief of police, or other police officer of the municipality serving the writs or process of the court, shall be the same as those allowed constables. All fees, fines, forfeitures and expenses collected shall be disposed of and accounted for by the judge and clerk in the same manner as provided for a mayor under the provisions of section 4270 of the General Code."

Section 1579-223, General Code, gives all police officers of the city of Alliance the legal right to serve process of all kinds from said court.

Section 1579-221, General Code, says the clerk of such court "shall pay over to the proper parties all moneys received by him as clerk; he shall receive and collect all costs, fines and penalties; and shall pay the same quarterly to the treasurer of the city of Alliance."

Section 1579-225, General Code, reads in part:

"* * * In criminal cases all *fees* and *costs* shall be the same as fixed with respect to police courts."

This section seems to distinguish between *fees* and *costs* section 1579-221, General Code, which uses only the word "costs" and does not command the clerk as to distribution of "fees" by specific name.

Section 4581, General Code, uses the word "Fees."

The fact that section 1579-225, General Code, refers to section 4581, General Code, in fixing fees, does not govern the distribution of same but their distribution is governed by section 1579-221, General Code, as the distribution in all municipal courts is governed by each particular municipal court act.

So we must distinguish between fees and costs if the chief is to get fees earned by him, for his own use, in the city of Alliance court.

In 19 Cyc. 463, we find the following:

"Fees are distinguished from costs in being always a compensation or recompense for services, while costs are an identification for money laid out and expended in a suit."

Crawford vs. Bradford, (Fla. 1887) 2 So. 782, 783, 19 Cyc. 463.

This is the same distinction as given in Bouvier's Dictionary, page 1198. Words and Phrases, Vol. 2, page 478, under "costs distinguished" we find the following:

"The terms 'fees' and 'costs' are often used interchangeably as having the same applications; but accurately speaking the term 'fees' is applicable to the items chargeable between an officer and a person whom he serves, while the term 'cost' has reference to the expenses of litigation as between litigants.

"*Bohart vs. Anderson*, 103 Pac. 742, 744, 24 Okl. 82, 20 Ann. Cas. 142.

"Loc. Acts. 1901, p. 671, No. 468, par. 37, provides that all moneys paid to the justice of the city of Sault Ste. Marie, except jury, officer, and witness fees and fines and costs recovered for violation of law, shall be for the use of the city; also that expenses of prosecution for violation of penal laws of the state shall be paid by the county. Held, that the justice was not entitled to retain the fees authorized by the general laws of the state to be collected in criminal cases by justices of the peace; they not being 'costs' nor expenses within the statute.

"*Harrison vs. Board of Sup'rs of Chippewa County*, 114 N. W. W. 851, 852, 151 Mich. 91.

"'Costs' are the expenses incurred by the parties in the prosecution or defense of a suit, whereas 'fees' are compensation to an officer for services rendered in the progress of a cause.

"In re: Terry, 123 N. Y. Supp. 258, 260, 67 Misc. Rep. 514.

"As between a party to a suit and the officer or witness, the charges allowed are usually denominated 'fees;' but as between the parties to the suit these charges are usually called costs. *City of Carterville vs. Cardwell*, 132 S. W. 745, 746, 152 Mo. App. 32."

However, the Supreme Court of Ohio in the case of *State ex rel. Commissioners of Franklin County*, 77 O. S. 333, on page 338, uses this language:

"Costs, in the sense the word is generally used in this state, may be defined as being the statutory fees to which officers, witnesses, jurors and others are entitled for their services in an action or prosecution and which the statutes authorize to be taxed and included in the judgment or sentence. The word does not have a fixed legal signification. As originally used it meant an allowance to a party for expenses incurred in prosecuting or defending a suit. Costs did not necessarily cover all of the expenses and they were distinguishable from fees and disbursements."

And we feel this definition must be followed in this state and especially so as section 1579-221, General Code, puts the duty of collecting "costs" and distributing "costs" on the clerk and is the only provision for collections in criminal cases.

The legislature must have meant to include "fees" and "costs" under the designation of "costs."

It is my opinion, therefore, that the chief of police of Alliance, Ohio, cannot keep fees earned in state cases by him for services personally performed.

Respectfully,

C. C. CRABBE,

Attorney-General.

2194.

APPROVAL, BONDS OF BATH TOWNSHIP CONSOLIDATED RURAL SCHOOL DISTRICT, GREEN COUNTY, \$10,200.00.

COLUMBUS, OHIO, February 2, 1925.

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

2195.

APPROVAL, BONDS OF EAST JEFFERSON RURAL SCHOOL DISTRICT, \$25,000.00.

COLUMBUS, OHIO, February 2, 1925.

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