

"Stock once issued is and remains outstanding within the purview of the franchise tax act, although owned by the corporation issuing the same, until retired and cancelled as provided by statute for the reduction of capital stock."

With respect to the escrowed stock, it appears that certificates therefor were issued and deposited with the commissioner of securities for ultimate delivery to stockholders who were, at all times, recognized by the corporation, the stockholders themselves, and the commissioner, as owners thereof.

The status of the commissioner with respect to holding this stock appears to be that of trustee under the agreement pursuant to which it was deposited with him, and the fact that a certain portion thereof was subsequently delivered to the company instead of to the stockholders, as contemplated by the arrangement or agreement referred to, would not in the least affect its liability for the franchise tax.

You are therefore advised on the facts above stated, that the shares of stock involved in the present inquiry are "subscribed or issued and outstanding capital stock," within the meaning of section 5498 G. C., and subject to the franchise fee or tax of three-twentieths of one per cent therein provided.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*

1845.

MUNICIPAL COURT OF MASSILLON.—PROVISIONS OF ACT ESTABLISHING SAID COURT CONSTRUED WITH PROVISIONS OF CRABBE ACT—ONE-HALF OF ALL MONEYS ARISING FROM FINES AND FORFEITURES IN CASES PROSECUTED BEFORE SAID MUNICIPAL COURT FOR VIOLATIONS OF CRABBE ACT SHOULD BE PAID INTO MUNICIPAL TREASURY—WHETHER OFFENSE COMMITTED IN CITY OF MASSILLON OR TOWNSHIP OF COUNTY IMMATERIAL—SECTION 13195 G. C. NOT REPEALED BY CRABBE ACT—PROVISIONS OF CRABBE ACT RELATE TO DISPOSITION OF FINES NOT APPLICABLE TO PROSECUTIONS UNDER SECTION 13195 G. C.

1. *Under the provisions of the act establishing the municipal court of Massillon, construed with the provisions of the Crabbe act, one-half of all moneys arising from fines and forfeitures in cases prosecuted before said municipal court for violations of the Crabbe act should be paid into the municipal treasury, regardless of whether the offense was committed in the city of Massillon or a township of the county.*

2. *Section 13195 G. C., providing an offense for keeping a place where intoxicating liquor is sold in violation of law, is not repealed by the Crabbe act. Provisions of the Crabbe act relative to the disposition of moneys arising from fines do not apply to prosecutions under said section. Such moneys, under the requirements of the Massillon municipal court act, should be paid into the municipal treasury.*

COLUMBUS, OHIO, February 7, 1921.

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

GENTLEMEN:—In your recent communication you request my written opinion upon a state of facts presented by the city solicitor of Massillon in his letter to you, which is as follows:

"Section 7 of the Crabbe act, at page 1184 of the second part of 108 Ohio Laws, provides that money arising from fines and forfeited bonds shall be paid one-half into the state treasury and one-half into the treasury of the township, municipality or county where the prosecution is held, according as to whether the officer hearing the case is a township, municipal or county officer.

Massillon has a municipal judge, whose salary is paid partly by the county, partly by the city and the townships of Perry and Tuscarawas.

First. Supposing a fine is imposed for an offense committed in Perry township outside of Massillon, and the trial is before the municipal judge, there being no justices of the peace in Perry township, who gets the second half of the fine, the municipality or the township treasury?

Second. Supposing an offense committed within the city of Massillon, and prosecuted under this law, a conviction and fine imposed, does the city get all of the second half of the fine or should it be divided with Perry township, in which Massillon is situated?

Third. As the municipal judge has jurisdiction under state laws to try offenses committed anywhere in the county, supposing a conviction is had in the municipal court of Massillon for an offense committed in a township outside of Perry and Tuscarawas townships but within Stark county, what disposition should be made of the second half of the fine?

You understand the judge is elected by all electors from Massillon city, Perry and Tuscarawas townships, and it will be necessary to have an answer to the above questions before we can properly divide the proceeds from liquor violations prosecuted under the Crabbe act. I take it if prosecutions are brought under old section 13195 G. C., that the proceeds from the fines will be paid as fines in other state cases, namely into the city treasury."

The act establishing the municipal court of Massillon was passed April 16, 1919, and became effective January 1, 1920, and is found in 108 O. L., page 447. Under the provisions of this act the court is to be styled "The Municipal Court of Massillon, Ohio," and, as stated in the solicitor's letter, the court's salary is to be provided for by the county of Stark, city of Massillon, and the townships of Perry and Tuscarawas of said Stark county. The pertinent sections of the act which relate to the jurisdiction and powers of said court, which it is believed advisable to consider, are as follows:

"Sec. 1579-418. Said municipal court herein established shall have the same jurisdiction in criminal matters and prosecutions for misdemeanors, for violations of ordinances as mayors of cities and any justice of the peace, and in addition thereto shall have ordinary civil jurisdiction within the limits of said city of Massillon and townships of Perry and Tuscarawas, in the county of Stark and state of Ohio, in the following cases:

(1) In all actions and proceedings of which justices of the peace, or such courts as may succeed justice of the peace courts, have or may be given jurisdiction.

(2) \* \* \*"

"Sec. 1579-419. The municipal court shall have jurisdiction within the limits of Stark county.

(1) To compel attendance of witnesses in any pending action or proceeding; also to compel the attendance of witnesses from the township of Sugar Creek, Wayne county, state of Ohio.

(2) To issue execution on its own judgments.

(3) In all actions and proceedings whether legal or equitable to enforce the collection of its own judgments.

(4) In all actions and proceedings where one or more defendants resides or is served with summons in the townships of Perry or Tuscarawas, county of Stark, state of Ohio."

"Sec. 1579-422. The municipal court shall have jurisdiction of all misdemeanors and of all violations of city ordinances of which police courts or the mayor in municipalities or a justice of the peace now have or may hereafter be given jurisdiction. In felonies the municipal court shall have the power which police courts or the mayor in municipalities or a justice of the peace now have or may hereafter be given."

"Sec. 1579-423. The municipal court shall have jurisdiction of all bastary and other quasi-criminal actions and proceedings of which a court of a justice of the peace now has or may hereafter be given jurisdiction; and in all such actions the practice and procedure and the powers of the court in relation thereto shall be the same as those which are now or may hereafter be possessed by a court of a justice of the peace."

"Sec. 1579-424. In the actions and proceedings of which the municipal court has jurisdiction, all laws conferring jurisdiction upon a court of common pleas, a police court or a justice of the peace or the mayor, giving such court or officer power, to hear and determine such causes, prescribing the force and effect of their judgments, orders or decrees, and authorizing and directing the execution or enforcement thereof, shall be held to extend to the municipal court, unless inconsistent with this act or plainly inapplicable."

"Sec. 1579-428. In all criminal cases and proceedings the practice and procedure and the mode of bringing and conducting the procedure of defenses and the powers of the court in relation thereto, shall be the same as those which are now, or may hereafter be, possessed by police courts or the mayor in municipalities unless as otherwise provided herein."

"Sec. 1579-429. In addition to the exercise of all other powers of a judge of said court, he shall render a complete annual report to the council of the city of Massillon covering the preceding year, which report shall show the work performed by the court, a summary of all expenses of the civil and criminal branches of the court respectively, a statement of receipts and expenditures, the number of cases heard, decided and settled by the court, the number of decisions of the municipal court reversed or affirmed by a reviewing court, and such other data as a council may require. The conduct of the criminal branch shall be arranged by said judge; and for both the criminal and civil branches of said court he shall prescribe forms, establish a system for the docketing of causes, motions and demurrers, adopt and publish rules governing practice and procedure not otherwise provided for in this act; and designate the mode of keeping and authenticating the records of proceedings had before him. The judge of the court may summon and impanel jurors, tax costs; compel the attendance of witnesses, jurors and parties; issue process; preserve order; punish for contempt; and may exercise all powers which are now, or may hereafter be, conferred upon the court of common pleas or the judge thereof, or upon justices of the peace, or upon police courts of cities or judges thereof, or are necessary for the exercise of the jurisdiction herein conferred and for the enforcement of the judgment and orders of the court."

Section 1579-444, which relates to the powers and duties of the clerk of the municipal court, in part provides:

"\* \* \* 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; he shall pay the same quarterly to the treasurer of the city of Massillon 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 times; 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."

"Sec. 1579-455. All proceedings, judgments, executions, dockets, papers, moneys, property and persons subject to the jurisdiction of the mayor's court of the city of Massillon and the courts of any justice of the peace for Perry and Tuscasawas townships in Stark county on December 31, 1919, shall be turned over to the municipal court herein created; and thereafter such causes shall proceed in the municipal court as if originally instituted therein, the parties making such amendments to their pleadings as required to conform to the rules of said court."

"Sec. 1579-456. Upon the qualification of the municipal judge, as provided for in section two hereof, the jurisdiction of the mayor of the city of Massillon or any person or officer exercising the jurisdiction of a mayor of the city of Massillon, and of all justices of the peace of Perry and Tuscarawas townships, Stark county, Ohio, in all civil and criminal matters shall cease, and no justice of the peace or constable shall thereafter be elected in said Perry or Tuscarawas townships."

Section 1 of Article IV of the Ohio Constitution vests in the general assembly of the state authority to establish courts inferior to those provided for in the constitution. Therefore, we must look to the provisions of the special act creating the court under consideration to determine the intent of the legislature relative to the character and jurisdiction of the court therein provided for.

It is believed to be apparent from the provisions above quoted, together with other requirements of the act, that the court created was intended to be regarded by the legislature as a municipal office in so far as the status is material in reference to the disposition of the fees collected under the Crabbe act. While it is true the judges are elected by the electors of the townships and city comprising the jurisdiction, and succeed to the powers of the office of the justices of the peace which are abolished in said townships, other provisions clearly indicate that it was the intent of the legislature that said office is to be regarded municipal in character. To illustrate: The act requires all fines and fees paid into said court to be paid into the city treasury. In considering this provision in connection with the provisions of section 1579-422 the conclusion seems irresistible that in cases prosecuted under the Crabbe act before the municipal court of Massillon, regardless of whether the offense is committed within the city of Massillon or the townships of Perry and Tuscarawas of Stark county, one-half of the moneys arising from fines and forfeited bonds shall be paid into the state treasury and one-half into the city treasury.

While the municipal court act under consideration, as above stated, requires all fees, fines, etc., to be paid into the municipal treasury, this provision is inconsistent with the provisions of the Crabbe act. However, inasmuch as the Crabbe act is a later enactment, under established rules of statutory construction the former statute must yield to this later enactment.

It is believed that the foregoing conclusively disposes of the first and second questions presented.

In considering the third inquiry it is believed that the provisions of the Crabbe

act clearly indicate the intent of the legislature relative to the disposition of the fines in the supposititious case presented. Section 6212-18, which is section 6 of the Crabbe act, provides:

“Any justice of the peace, mayor, municipal or police judge, probate or common pleas judge within the county with whom the affidavit is filed charging a violation of any of the provisions of this act (G. C. 6212-13 to 6212-20), when the offense is alleged to have been committed in the county in which such mayor, justice of the peace, or judge may be sitting, shall have final jurisdiction to try such cases upon such affidavits without a jury, unless imprisonment is a part of the penalty, but error may be prosecuted to the judgment of such mayor, justice of the peace, or judge as herein provided. And in any such cases where imprisonment is not a part of the penalty, the defendant cannot waive examination nor can said mayor, justice of the peace, or judge recognize such defendant to the grand jury; nor shall it be necessary that any information be filed by the prosecuting attorney or any indictment be found by the grand jury.”

The following section of said act, which has heretofore been considered, provides that the moneys arising from fines and forfeited bonds shall be paid one-half into the state treasury and one-half to the treasury of the township, municipality, or county where the prosecution is held “according as to whether the officer hearing the case is a township, municipal, or county officer.” Without deciding whether the officers mentioned in section 6212-18 are, strictly speaking, to be regarded as township, municipal, or county officers, it seems clear in view of the provisions of the act under consideration that it was the intent of the legislature, for the purpose of distribution of the moneys arising from fines and forfeitures under the act, to regard a justice of the peace as a township officer, a municipal or police judge as a municipal officer, and a probate judge or common pleas judge as a county officer.

This conclusion cannot be escaped in view of the fact that preceding the section providing for the distribution of fees the same legislature gave justices of the peace, mayors, municipal or police judges final jurisdiction throughout the county. If the jurisdiction granted therein were indicative of the kind of officer then the legislature by its own act designated all courts having jurisdiction of violation of the Crabbe act as county officers, and if such a view could be entertained then the following section distributing the fees “according as to whether the officer hearing the case is a township, municipal, or county officer” would have been wholly unnecessary because, under such circumstances, there would be no township or municipal officers.

It is a well known rule of statutory construction that a construction will not be adopted which produces absurd results, in the event that another conclusion can be logically reached. It further has been frequently held that effect must be given to all of the language used by the legislature.

It is therefore the opinion of this department that one-half of the money arising from fines and forfeited bonds in the hands of the municipal court of Massillon on account of prosecutions instituted therein under the Crabbe act, regardless of what township in the county of Stark the offense was committed, should be paid into the municipal treasury.

In reference to the fourth proposition relative to the disposition of fines arising from prosecutions under section 13195 G. C., it seems essential to consider whether this section is still in force. The repealing section of the Crabbe act provides in part:

"All provisions of law inconsistent with this act are repealed only to the extent of such inconsistency."

The question now is whether the provisions of section 13195 G. C., or any part thereof, are inconsistent with the Crabbe act. Said section provides:

"Whoever keeps a place where intoxicating liquors are sold, furnished or given away in violation of law, shall be fined not less than one hundred dollars nor more than five hundred dollars, and, for each subsequent offense shall be fined not less than two hundred dollars nor more than five hundred dollars. The court, on conviction for a second or subsequent offense, shall order the place where such liquor is sold, furnished or given away in violation of law, to be abated as a nuisance, or shall order the person convicted for such offense to give bond payable to the state of Ohio in the sum of one thousand dollars, with sureties to the acceptance of the court, that such person will not sell, furnish or give away intoxicating liquor in violation of law, and will pay all fines, costs and damages assessed against him for violation of the laws relating to the sale of intoxicating liquors. The giving away of intoxicating liquors, or other shift or device to evade the provisions of this section, shall be unlawful selling."

The gravamen of the offense defined in said section is in keeping a place where intoxicating liquors are sold or given away in violation of law. After careful consideration of the Crabbe act no provision has been found covering this particular offense. Therefore, I am constrained to hold that section 13195 is still in force. It therefore is obvious that the provisions of the Crabbe act relative to the distribution of moneys arising from fines, etc., do not apply to prosecutions instituted under the provisions of this section.

In further considering the question as to what disposition should be made of the moneys arising from the fines from prosecutions under this section it seems proper to give attention to the provisions of section 13247 G. C., which is as follows:

"Fines and forfeited bonds collected under this subdivision of this chapter, except as provided in section thirteen thousand two hundred and thirty-one, if enforced in the county court, shall be paid into the county treasury, and, if enforced in municipal courts, shall be paid into the treasury of the municipal corporation in which the cause was tried. Such funds paid into the treasury of the municipal corporation shall be applied as the council thereof may direct."

While at first hand it might seem that this section would apply, a closer examination discloses that the section is applicable only to cases arising under the "subdivision" of the chapter of which said section is a part. It is further apparent that the subdivision referred to is "local option." It therefore must be concluded that this provision cannot be followed in making disposition of the fines collected under section 13195.

In view of this determination the next question that confronts us is whether the other provisions of law requiring the fines and costs in state cases to be paid into the county treasury will control, or whether the provisions of the act establishing the municipal court of Massillon, which requires that all fines, fees, etc., shall be paid into the municipal treasury, will be followed.

In opinion number 576, found in Opinions of the Attorney-General for the year 1919, page 1026, the disposition of the fees under the Toledo municipal court act was considered. The provisions of the Toledo act and the Massillon act relative to

paying the fees into the municipal treasury are practically the same, with the exception that the Toledo act, after requiring payment into the treasury, adds the following qualification: "Except as otherwise provided by law." The second branch of the syllabus of said opinion is as follows:

"In police courts, or municipal courts succeeding such police courts, in the absence of specific provision to the contrary, under section 4599 G. C. the fees and costs imposed and collected by the court in state cases go into the county treasury."

The exception above referred to was emphasized in said opinion, and it was also noted that the Toledo act further provided that the clerk should succeed to all the powers and duties of a police court clerk. However, in the Massillon act it is provided that all fees, fines, etc., shall be paid into the municipal treasury without any qualifying provisions whatever, and it is believed that consideration of said opinion will disclose that the opposite conclusion would have been reached had it not been for the qualifying provisions as above referred to.

In this connection it, perhaps, is proper to mention that the court of common pleas, in the case of State, ex rel. vs. Thompson as clerk of the municipal court of Dayton, which was decided May 28, 1914, held that the fees in state cases under the Dayton municipal court act should be covered into the county treasury. However, it is believed that a careful analysis of the Dayton act and said opinion discloses conditions that do not obtain in the case before us. The Dayton act, after requiring the clerk of the municipal court to pay all costs, fines and penalties into the municipal treasury, further provided that said municipal clerk should have all the powers and perform all the duties of a police court clerk. The court in this case reached the conclusion that the act was inconsistent in this respect, and therefore section 4599 should control.

As above stated, no such inconsistency appearing in this case and the municipal court act of Massillon specifically requiring, without qualification, that all fees, costs, fines, etc., shall be paid into the municipal treasury, it is believed, as suggested in the solicitor's letter, that fines arising from prosecutions instituted under section 13195 should be paid into the municipal treasury of the city of Massillon.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*

1846.

BOARD OF EDUCATION—WHERE TWO SPECIAL MEETINGS CALLED FOR SAME PURPOSE—ONE BY PRESIDENT OF BOARD—OTHER BY TWO MEMBERS OF BOARD—BOTH LEGAL CALLS—HOW PURPOSE OF CALLS LEGALLY DISPOSED OF.

*When two special meetings of a board of education are called for the same purpose, one by the president of the board, the other by two members of the board, each in accordance with law, both are legal calls and the one to prevail will be that at which the board legally disposes of the matter for which the call was made.*

COLUMBUS, OHIO, February 7, 1921.

HON. MARY K. DAVEY, *Prosecuting Attorney, Logan, Ohio.*

MY DEAR MISS DAVEY:—Acknowledgment is made of the receipt of your letter of recent date, which reads: