

It is clear from the foregoing authorities that the provisions in former sections 8573 and 8574, General Code, became by reference and adoption a part of section 8578 when said last named section was passed, and that the subsequent amendment and modification of said sections 8573 and 8574, General Code 110 O. L., page 13, did not affect said provisions as theretofore adopted.

You are therefore advised that the distribution of personal property in the hands of an administrator of the kind referred to in section 8578, General Code, is to be in accordance with sections 8573 and 8574 as said sections read prior to their amendment in 110 Ohio Laws.

Respectfully,  
C. C. CRABBE,  
*Attorney-General.*

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1550.

COSTS MAY BE TAXED AGAINST DEFENDANT IN ALL CRIMINAL CASES—SECTION 12375 G. C. CONSTRUED.

COLUMBUS, OHIO, May 29, 1924.

*SYLLABUS:*

*Section 12375 G. C. authorizes the taxing of costs against the defendant in all criminal cases. In the absence of any provision upon the subject in a municipal court act, the above section applies. Opinion for year 1921, page 497, concurred in.*

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

Gentlemen:—

Your recent communication is as follows:

“The Criminal Court of Lima, Ohio, was established in 106 O. L. 112, being sections 14740-24 to 14740-34 of the General Code. The penalties assessed by this court in both state and ordinance cases do not include costs of prosecution on the theory that the law creating the court does not provide for the taxing of such costs as a part of the judgment.

Opinion No. 1480, to be found on page 844 of the 1920 Opinions advised the Bureau that section 14740-28 of the Lima Criminal Court act fixes the fees in such court but does not provide for their being taxed as costs and their inclusion in the sentence in a criminal case.

The Bureau was advised in Opinion No. 2154 to be found on page 497 of the 1921 Opinions of the Attorney General that:

“Although court costs and fees are not specifically provided in the act establishing a municipal court, it is intended that the costs and fees should be collected unless otherwise provided for therein.

The court costs and fees in a municipal court are the same as in section 2898 et seq. G. C., unless therein otherwise provided.”

This conclusion seems to have been reached on the theory that the Middletown municipal court was a court of record and that section 2898 et seq. G. C., were applicable.

Section 14740-24 of the Lima Criminal Court act provides that such court shall be a court of record.

In view of this seeming conflict in theory, the Bureau would appreciate your reconsideration of the question of the imposition and collection of costs by the Criminal Court of the City of Lima."

A careful examination has been made of the opinions to which you refer, and as suggested by you, it would seem that there is a conflict in the opinions in certain respects.

In connection herewith consideration has been given to section 12375 of the General Code, which provides:

"In all sentences in criminal cases, including violations of ordinances, the judge or magistrate shall include therein, and render a judgment against the defendant for the costs of prosecution; and, if a jury has been called in the trial of the cause, a jury fee of six dollars shall be included in the costs, which, when collected shall be paid to the public treasury from which the jurors were paid."

This section is specific in its requirement that in all criminal cases the judge or magistrate shall include in the judgment against the defendant the costs of prosecution. Of course, if the provisions of a municipal court act are in conflict with the provisions of this section, it is evident that the special act would control over the general provision. However, it would seem to be equally clear that if the special act makes no provision inconsistent with the general act and is silent upon the subject of rendering judgment for costs, then the section above quoted would apply. That section evidently was not considered in the former opinion to which you refer, and it is my judgment said opinion was in error holding that there is no existing provision for the taxing of the costs. Furthermore, as suggested in the opinion of 1921, to which you refer, it would appear that the provisions of section 2898 to the effect that the duties of the clerk of the Common Pleas Court apply to other clerks of courts of record in those cases where the statute creating such courts are silent upon the subject of taxing costs.

In view of the foregoing, I concur in the holding of the opinion of the Attorney General for the year 1921, page 497, and disagree with the opinion found in Opinions of Attorney General for 1920, page 844, so far as it is inconsistent with the latter opinion.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*

1551.

APPROVAL, BONDS OF MARIETTA TOWNSHIP RURAL SCHOOL DISTRICT, WASHINGTON COUNTY, \$4,016.50, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, May 31, 1924.

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