1882.

INTERPRETATION SECTION 1579-1065a G. C. AND SECTION 3056 G. C.—CLERK OF PAINESVILLE MUNICIPAL COURT —LAKE COUNTY LAW LIBRARY ASSOCIATION—FINES AND PENALTIES—CONFLICT OF LAW.

SYLLABUS:

The express provisions of Section 1579-1065a, *General Code (effective July* 26, 1929), *requiring the Clerk of the Painesville Municipal Court to pay to the Lake County Law Library Association a certain definite amount of money from all costs, fines and penalties collected by him for the benefit of the county, must be given effect over the provisions of Section* 3056, *General Code (effective as amended July* 24, 1931) *and which is a general statute containing such provisions for payment to the county law library association by the clerks of municipal courts of fines and penalties that are in conflict with the provisions of Section* 1579-1065a, *General Code.*

COLUMBUS, OHIO, February 5, 1938.

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

GENTLEMEN: This will acknowledge receipt of your recent communication, which reads as follows:

> "We are inclosing herewith letter from our Painesville Examiner, and in connection therewith it is requested that you advise us if payments to the Lake County Law Library from the Municipal Court of Painesville, are covered by the provisions of Section 1579-1065a, General Code, or by Section 3056, of the General Code"

The attached letter from your Examiner reads as follows:

> "The question has come up as to whether the Clerk of the Municipal Court of Painesville is governed by the provisions of Section 1579-1065a G. C., or Section 3056 G. C., in computing the amounts due to the Lake County Law Library Association. I have been asked by both the Judge and Clerk of the Municipal Court to request an opinion of the Attorney General on the question.
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> Section 1579-1065a G. C., effective July 26, 1929, provides:

"Before the payment of any monies to the treasurer of Lake County in accordance with the provisions of Section 1579-1065, the clerk of Painesville municipal court shall pay to the Lake County Law Library Association, all costs, fines, and penalties collected by him for the benefit of the county, but the sum so paid from the costs, fines, and penalties shall not exceed six hundred dollars ($600.00) per annum. In the event in any one year a sufficient sum of money has not been collected for the benefit of the county to pay said sum of six hundred dollars ($600.00) then said clerk shall pay out of the costs, fines, and penalties collected for the benefit of the city of Painesville an amount sufficient so that the total paid to said association shall be six hundred dollars ($600.00). And in the event said clerk does not have sufficient funds in his hands, then the same shall be paid to said association out of the municipal court fund, by the treasurer of the city of Painesville upon the certificate of said clerk. The money so paid shall be expended in the purchase of law books and in the maintenance of a law library, the use of which shall be free to all of the judges and other officers of the city of Painesville and county of Lake. This provision for the compensation of law library association shall be in addition to all other income of said association."

It is noted that Section 3056 G. C., as now in the statutes was amended effective July 23, 1931, which is a later date than the enactment of the Painesville Municipal Court Act, particularly Section 1579-1065a G. C.

It is also noted that in Section 1579-1065a G. C., there are two provisions, first, that the sum of $600.00 be paid annually to the law library from the county's share of costs, fines and penalties collected; second, that in case the county's share does not equal $600.00, the difference shall be paid from city funds.

This brings up another question, viz:

If the clerk of the municipal court should follow the provisions of Section 3056 G. C., and in the event the law library's share of fines in state cases, computed in accordance with the provisions of Section 3056, should be less than $600.00 per year, would that portion of Section 1579-1065a G. C., which provides that an amount sufficient shall be paid from funds due the city or direct from the city treasury, so that the total paid to the law library shall be $600.00 per annum, hold?

From our observation, if the clerk is required to follow the provisions of Section 3056 G. C., instead of Section 1579-1065a, the law library's share would be approximately $1,200.00 per annum, after salaries had been deducted, instead of $600.00 as now allocated to them. If it is held that Section 3056 governs, shall we back up to the year 1931 in making our finding for adjustment, or compute same on the collections and payments during 1936 and 1937. It has been customary for the clerk to pay all of the county's portion over to the law library beginning the first of the year until the total of $600.00 has been paid, therefore, the amount paid to the law library the first few months of 1936 prior to our audit period, possibly would be greater than if computed on a monthly basis, while the payments made in 1936 during our audit period, from June 1st on, would be less than the amounts due for those remaining months of 1936. My thought was, that if we are not to back up to 1931, we should go back to January 1, 1936."

Section 1579-1065a, General Code, is quoted in the letter from your Examiner.

Section 3056, General Code, became effective July 24, 1931, and, as amended, reads 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."

The provisions of Sections 1579-1065a and 3056, General Code, are conflicting in the following respects:—Section 1579-1065a, supra, includes *all costs, fines and penalties* in the fund from which the payment to the library association is to be derived, while Section 3056, supra, includes *only all fines and penalties.* Section 1579-1065a, supra, does not require any deduction from the fund before payment, while Section 3056, supra, requires certain deductions to be made. Section 1579-1065a, supra, provides for payment in the definite amount of $600.00 per annum, and provides for payment of such $600.00 in the event in any one year a sufficient sum of money has not been collected for the benefit of the county; Section 3056, supra, fixes no definite and certain amount to be paid, but provides that the payments shall in no month be less than 15 per cent of the fines and penalties collected in that month without deductions of allowances specified in said section and further, that the total amount paid in any one calendar year by the clerk of any municipal court "to the trustees of such library association shall in no event exceed six thousand dollars per annum." Section 3056, supra, provides payment not to exceed one thousand dollars of the municipality's share of the fines and penalties collected by the municipal court for violation of the prohibition laws, while Section 1579-1065a, supra, refers to all fines, penalties and costs and makes no separate provision for fines and penalties for violation of the prohibition laws.

Section 3056, supra, is a general statute relating to all fines and penalties assessed and collected by a municipal or police court and for distribution of such funds to the trustees of the law library association. The effective date of its amendment was July 24, 1931.

Section 1579-1065a, supra, that became effective July 26, 1929, is a special statute relating to payment by the Clerk of the Painesville Municipal Court to the Lake County Law Library Association from the fund derived from costs, fines and penalties of a certain definite sum.

It is clear that the provisions of Sections 1579-1065a, and 3056, supra, are irreconcilable. It is a well established principle of law that where there is a conflict between a special statute and a general statute, the special statute should prevail over the general. This principle of law was well discussed in the case of State, ex rel. *The Cleveland Law Library Association* vs. *Peter J. Henry*, Clerk of the Municipal Court of Cleveland, 23 O. C. C. (N. S.) 541, wherein it was held:

> "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.
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> "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."

To the same effect is the case of *State, ex. rel. Allen County Law Library Assn.* vs. *Welker*, Clerk of Courts, 47 O. App., 42. In that case the sections of the Code in question were 1579-1359, which had become effective August 4, 1931, and provided payment by the Clerk of the Municipal Court of Lima to the county law library from the fund derived from all costs, fines and penalties, of a certain definite amount, and Section 3056, supra, which, as hereinabove stated, became effective in its present form July 24, 1931. The Court in that case held:

> "1. Special act conflicting with general law will prevail.
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> "2. General statute, requiring municipal court clerks to pay fines and penalties collected to county law library associations, is inappplicable to municipal court created by special act containing conflicting provisions (Sections 1579-1359 and 3056, General Code, (114 Ohio Laws, 314, 89).
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> "3. Statutes must be construed so as to give them effect, if possible.
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> "4. Repeals of statutes by implication are never favored.

"5. Express provision of statute must be given effect over conflicting provision of statute incorporated in former statute by reference.

"6. Clerk of Lima Municipal Court must make payments, required by special act creating such court, to Allen County Law Library Association, from costs, as well as fines and penalties, collected by him (Sections 1579-1359 and 3056, General Code, (114 Ohio Laws, 314, 89)."

The subject matter contained in Section 1579-1359, General Code, and Section 1579-1065a, supra, is similar in substance, that is, both sections provide for payment by the clerk of the municipal court of a certain definite amount of money derived from all costs, fines and penalties. However, Section 1579-1359, General Code, became effective *after* the amendment of Section 3056, supra, while Section 1579-1065a, supra, became effective *before* the amendment of Section 3056, supra.

This distinction cannot be considered as in any way affecting the conclusion reached in the Allen County Law Library Association case, supra. The rule relating to control of special statutory provisions over general provisions applies also in a case where the general provision was amended after the enactment of the special provision. Such a situation existed in the case of *State* vs. *Borham,* 72 O. S., 358, wherein there was a conflict between Section 1817, Revised Statutes, providing that the mayor "shall have final jurisdiction to hear and determine any prosecution for a misdemeanor unless the accused is, by the Constitution, entitled to a trial by jury" and Section 7146, Revised Statutes, as amended many years after the passage of Section 1817, Revised Statutes, which provided that where one accused of a misdemeanor is brought before a magistrate on the complaint of one other than the person injured, and pleads guilty, the magistrate shall require him to enter into a recognizance to appear in the proper court. At page 363, the Court said:

"We are constrained to the conclusion that Section 1817 was intended by the general assembly as an exception to the general provisions of Section 7146. Had the intent been otherwise, it would have been entirely easy, by the use of a half dozen words, to make that purpose plain. No such words are used. This conclusion is strengthened rather than weakened by the fact that, after the enactment of Section 1817, the general subject was further considered as is shown by the amendment to Section 7146, to which counsel for defendant call attention; and the fact that no change was then made in Section 1817 indicates that none was desired. It is the duty of the courts to

> enforce plain statutes as they find them. *Slingluff* vs. *Weaver*, 66 Ohio St., 621. By these plain terms final jurisdiction is given the mayor, provided only that the offense charged is a misdemeanor and that the accused is not entitled to a trial by jury."

To the same effect is the case of *Mizner* vs. *Paul, et al.*, 29 O. C. A., 33, That case involved the question of conflict between two sets of laws, one set, the "Mechanics' Lien Law," providing in substance, that every person furnishing material or labor shall have his lien, and the other act, the Torrens Law, which, in effect, provided that every bona fide purchaser shall have his land free from such lien. The Court, in discussing the case stated that, "it is apparent the mechanics' lien is a general law of general application, furnishing a general plan by which mechanics' liens can be obtained;" and that, the Torrens Act must be regarded as an exception to the general plan." So applicable is the discussion in regard to the two statutes involved in the *Mizner* vs. *Paul* case, supra, to the question presented by the two statutes involved in this opinion that I quote verbatim from that part of the opinion of the Court in said case as appears on page 40:

> "The case is presented for the application of the rule of construction laid down in *Gas Company* vs. *Tiffin*, 59 O. S., 420:
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> 'It is a settled rule of construction that special statutory provisions for particular cases operate as exceptions to general provisions which might otherwise include the particular cases, and such cases are governed by the special provisions,' and the application of this rule is not rendered inappropriate by the fact that the mechanics' lien law has been amended since the passage of the Torrens law. This fact, we think, does not affect the rule laid down in *Rodgers* vs. *The United States*, 185 U. S., 83, the syllabus of which is in part as follows:
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> 'Where there are two statutes, the earlier special and the later general (the terms of the general being broad enough to include the matter provided for in the special) the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, and the general will not be understood as repealing the special, unless a repeal is expressly named, or unless the provisions of the general are manifestly inconsistent with those of the special.'

And 36 Cyc., 1151, where it is stated:

'General and special statutes. Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy, but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to or qualification of the prior general one, and where the general act is later the special will be construed as remaining an exception to its general terms, unless it is repealed in express words or necessary implication.'

In addition it may be said that even though the Legislature did amend the mechanics' lien law since the passage of the Torrens law it is not to be presumed that its attention was called to any apparent inconsistency between the two laws, so that the fact of a later amendment can be of little force in determining the question at issue.

We approve of the language of the Attorney-General of Ohio in this respect as taken from the Reports of the Attorney-General of 1914, page 1195:

'As the land registration act is the later enactment, and is furthermore a special statute, I think that instead of calling for the doctrine of implied repeal, this state of affairs justifies the application of the theory that where the same statute, or different statutes upon the same subject, contain incompatible provisions, one of which is general and the other special, the latter shall be held and treated as an exception to the former.' "

In accordance with the rules hereinabove set forth, it appears that the express provisions of Section 1579-1065a, supra, must be given effect over the conflicting provisions of Section 3056, supra, and that therefore, "the Clerk of Painesville Municipal Court must pay to the Lake County Library Association, all costs, fines and penalties collected by him for the benefit of the county, in the sum of six hundred dollars.

This conclusion is further corroborated by the fact that the manner in which Section 3056, supra, was amended, did in nowise affect, and, was not material to the provisions of Section 1579-1065a, supra. The amendment provided that the compensation of the "judge of the municipal court presiding in the police court" should be deducted from the fines and penalties collected, and limited the total amount that could be paid "in any one year by the clerk of any municipal court or police court

to the trustees of such library association" to $6,000 per annum.

Specifically answering your question it is my opinion that payments to the Lake County Law Library from the Municipal Court of Painesville, are covered by the provisions of Section 1579-1065a, General Code.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

1883.

APPROVAL—BONDS VILLAGE OF ROCKFORD, MERCER COUNTY, OHIO, $3,000.00, DATED FEBRUARY 1, 1938.

COLUMBUS, OHIO, February 7, 1938.

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

RE: Bonds of Village of Rockford, Mercer County, Ohio, $3,000.00 (Unlimited).

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of public toilet stations bonds dated February 1, 1938, bearing interest at the rate of 3½% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said village.

Respectfully,
HERBERT S. DUFFY,
Attorney General.