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1. COUNTY LAW LIBRARY ASSOCIATIONS — ANNUAL REFUNDS — SHOULD BE MADE TO TREASURERS OF CONTRIBUTING POLITICAL SUBDIVISIONS PRO RATA — BASIS, ACTUAL PAYMENTS — SECTION 3058 G.C.
2. MUNICIPAL CORPORATION AND COUNTY LAW LIBRARY ASSOCIATION — MAY NOT COMPROMISE OR SETTLE FOR LESS AMOUNT OWING BY MUNICIPALITY — SECTION 3056 G.C.

SYLLABUS:

1. *Annual refunds by county law library associations, under the provisions of Section 3058, General Code, should be made to the treasurers of the contributing political subdivisions pro rata on the basis of actual payments by such subdivisions, whether made on time or after the expiration of the year in which due.*

2. *A municipal corporation and a county law library association may not enter into a compromise or settlement for less than the amount owing such association by the municipality under the provisions of Section 3056, General Code.*

Columbus, Ohio, July 18, 1941.

Hon. Lester W. Donaldson, Prosecuting Attorney,
Painesville, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion on the following:

"I desire to secure your official opinion upon a certain question arising out of the following state of facts:

The Lake County Law Library Association is a corporation, not for profit, organized under the laws of this state, authorizing said corporation to maintain a law library in the Court House at Painesville, Ohio, for the use of the judges of the various courts as well as for use by members of the Bar.

Under the provisions of Section 3056 et seq. of the General Code, the Auditor of Lake County made and fixed for the year 1940 an apportionment of the amount to be paid to the Law Library Association out of the fines collected in the Municipal Court of Painesville and in the Mayors' courts of various municipalities throughout the county, the aggregate of the amount so apportioned being Seventy-Five Hundred Dollars (\$7,500.00).

Thereafter the Municipal Court of Painesville and certain of the Mayors' Courts paid in full the amount apportioned to them by the county auditor; in certain other municipalities the Mayors' Courts paid a part of the amount apportioned to them, and one municipality paid nothing.

The following is a statement of the amounts apportioned and the amounts paid by such municipalities:

SUBDIVISION	APPORTIONMENT	PAID IN 1940	PAID IN 1941
Painesville	\$1,377.60	\$1,377.60	
Kirtland Hills	1.66	1.66	
Perry	3.54	3.54	
Madison	15.09	15.09	
Wickliffe	531.07	177.02	
Willoughby	1,192.64	400.00	
Mentor-on-the-Lake	98.17		98.17
Fairport	43.27		43.27
Mentor	558.13		200.00
Willowick (\$3000.00 Max.)	3,678.83		
	<u>\$7,500.00</u>		
Common Pleas Court Fines		65.00	
Municipal Court Fines		469.77	32.50
		<u>\$2,509.68</u>	<u>\$373.94</u>

During the year 1940, the law library actually expended \$1277.93, and purchased books which were not delivered until after the first of the year for \$429.00, making a total expenditure for \$1706.93. This left unexpended at the end of the year \$802.75 of which, under these sections, 90% or \$722.47 is required to be refunded.

We desire your opinion on two questions directly connected with the above figures and also one other question which is related to the same subject.

(1) Should the refund to the municipalities be based on the amount apportioned to each of them by the county auditor, or should the refund be based on the amount actually paid in by each municipality? If the refund is to be based on the apportionment rather than what was actually paid in, will you kindly indicate the proper method of computing the refund?

(2) Should the refund of the money on hand the first of the year include money raised by the municipalities to cover their 1940 apportionment, but not paid into the law library until after the first of the year? If this money is not refunded as a part of the 1940 revenue, please indicate what effect, if any, it has on the 1941 apportionment against the same villages.

(3) Has the Law Library Association any authority to settle the apportionment against one of the villages for less than its pro rata share? We have in mind the Village of Willowick whose fines, under a new administration, diminished from \$30,000.00 in 1938 and 1939, to about \$3,000.00, in 1940, and consequently left them short of revenue."

Your first two questions are prompted by Section 3058, General Code, which provides as follows:

"On the first Monday of each year, the trustees of the association shall make a detailed statement to the auditor of the county, verified by the oath of the treasurer of the association, of the amount of the fines and penalties so received, and of the money expended by the association.

In the event the total amount received under sections 3056, 3056-1, 3056-2 and 3056-3 of the General Code during the preceding calendar year covered by such report exceeds the expenditures during the same period, the county auditor shall certify such fact to the trustees of the association, who shall thereupon direct the treasurer of the law library association to refund or repay, pro rata to the treasurers of the political subdivisions from which such balance was received, not less than 90 per cent of any unencumbered balance on hand from the preceding year."

Although those questions inquire only with respect to municipalities, by reason of the requirement of this section that refunds be made to all political subdivisions from which money was received under authority of Sections 3056, 3056-1, 3056-2 and 3056-3, General Code, it will be necessary in answering such questions to keep in mind contributing subdivisions other than municipalities.

At the outset it will be noted that Section 3058, supra, and cognate sections, contemplate annual payments to and refunds by trustees of the several county law library associations. In other words, it is intended that each year the several courts concerned pay certain sums to the law library associations to be expended in the purchase of law books and in the maintenance of each association. Further, at the end of each year, the trustees of each association make a detailed report to the county auditor showing the amounts received and expended during the year just ended. If this report shows an unencumbered balance, it is the duty of the county auditor to certify such fact to the trustees of the association who are then required to direct its treasurer "to refund or repay, pro rata to the treasurers of the political subdivisions from which such balance was received, not less than 90 per cent of any unencumbered balance on hand from the preceding year."

In computing the refunds to municipalities under Section 3058, supra, I am of the opinion that the determination of maximum payments made by the county auditor pursuant to Section 3056, General Code, should not be considered or consulted. Such determination, based upon receipts of the several courts for the preceding year, is solely for the purpose of payments to law library associations and has no connection with refunds by them. The refunds are based upon the actual receipts of the law library association which go to make up the unexpended balance. It is highly probable that the maximum figure determined by the county auditor will not actually be required to be paid in by a particular municipal court by reason of reduced income from the sources out of which payments are made.

It is accordingly my opinion that the refunds should be made out of the money on hand at the time of distribution only to the treasurers of those political subdivisions which actually contributed for the particular year for which refund distribution is being made. Such refunds should be pro rated in proportion to what each subdivision's payments

bear to the total monies actually received. By way of illustration, let us assume the following: Subdivision A pays in \$300.00 for the year 1940; the total actual receipts of the law library association at the end of said year are \$3,000; expenditures by the association total \$2,400.00, leaving an unencumbered balance of \$600.00. In such case the treasurer of the law library association must refund \$540.00 to the treasurers of the political subdivisions which actually contributed to make up the \$3,000.00. Applying the rule above set forth, Subdivision A would be entitled to a refund of \$54.00. In like manner, had Subdivision B paid in \$200.00 of the \$3,000.00 collected, its treasurer would receive a refund of \$36.00.

Section 3058, *supra*, contemplates that all monies due law library associations under the provisions of Section 3056, *et seq.*, General Code, will be paid to each association in the year it becomes due. No express provision is made therein for the method of the refund of monies due in one year but not actually paid in until a succeeding year. I have in mind the \$373.94 set forth in your statement of accounts which represents money due in 1940 but not paid until 1941. If such money is on hand before the treasurer of the law library association makes any refunds, it is my opinion that it should be added to the 1940 receipts and pro rata distribution be made from this total to each subdivision in proportion to what the payments of each bear to said total. To illustrate, if, in our original case, Subdivision C should make a payment of \$600.00 in 1941 for the year 1940 and the treasurer of the law library association has not made any refunds for 1940 at that time, when refunds are made out of the 90 per cent of the unencumbered balance, which would now be \$1,200.00, Subdivision C would receive \$180.00, Subdivision A \$90.00 instead of the original \$54.00, and Subdivision B \$60.00 instead of the original \$36.00. The remaining \$750.00 would, of course, be refunded proportionately to the other contributing subdivisions.

The next situation which confronts us is where a political subdivision pays its debt after refunds have been made for the year in which this late payment was due and owing, as for example, a payment of \$300.00 by Subdivision D for 1940 in the year 1941 after refunds have been made by the treasurer of the law library association. The question arises what to do with this money. I am inclined to the view that the law library association may only retain ten per cent thereof and must refund the remaining 90 per cent, or \$270.00, as provided by Section 3058, *supra*.

This may be accomplished in the following manner: add Subdivision D's payment of \$300.00 to the total receipts for 1940, which would make same \$3,900.00; then add the \$270.00 to the amount already refunded. That figure would then be \$1,350.00. Next divide the contributions actually made by each political subdivision, including Subdivision D, into \$3,900.00, the total receipts to determine the pro rata share of each in the \$1,350.00. Such computation would call for a refund of approximately \$104.00 to both Subdivision A and Subdivision D, \$69.00 to Subdivision B and \$208.00 to Subdivision C. By way of refunds A has already received \$90.00, B \$60.00 and C \$180.00. Deducting these payments to A, B and C from the pro rata share of each of the \$1,350.00, as above explained, the result would be that out of the \$270.00 of D's to be refunded A would receive approximately \$14.00, B \$9.00 and C \$28.00. D, of course, would be entitled to its full share of approximately \$104.00 by reason of the fact it has received no prior refund.

The above methods of refund may appear somewhat complicated and cumbersome. However, as pointed out in this opinion Section 3058, *supra*, is silent with respect to late payments and it is believed that the methods outlined prove equitable and in keeping with the spirit of the law.

Summarizing and specifically answering your first two questions, it is my opinion that refunds for a given year, under the provisions of Section 3058, *supra*, should be made to contributing political subdivisions pro rata on the basis of actual payments, whether made on time or after the expiration of the year in which due.

I come now to your third question relative to the "authority to settle the apportionment against one of the villages for less than its pro rata share." In this connection it must be remembered that municipal courts are not necessarily liable each year for the full amount fixed by the county auditor's apportionment under Section 3056, General Code. Such fixed amount, if \$3,000.00 or less, is the maximum which may become due. By the terms of said section, payments by a municipal corporation are based on "all monies *collected*" and if the collections are insufficient to attain the maximum the law library association will not be entitled to the maximum. It will receive only the percentage of the monies collected as prescribed by the first paragraph of Section 3056, General Code. I assume, therefore, your inquiry is directed to a compromise or settlement with a

municipal corporation for an amount less than is owed by such corporation under the provisions of said first paragraph of Section 3056, General Code.

Nowhere in Section 3056, General Code, or Section 3058, General Code, is provision made for the trustees of the law library association to effect a settlement with a municipal corporation with respect to money due the association from the sources named in Section 3056, General Code. Any such compromise or settlement for less than the amount due under the statute would be detrimental to the other political subdivisions which had paid the correct amounts. It would be placing a greater burden on those subdivisions in maintaining law library associations. This would be apparent at the conclusion of a given year when pro rata refunds are made to all contributing political subdivisions. If one of such subdivisions is permitted to settle its account for less than the amount it owes, each of the other subdivisions would be damaged its pro rata share of the difference between the amount the one subdivision owed and the amount paid. Because of the want of statutory authority and the inequalities which would result from the type of compromise or settlement with which we are concerned, I must conclude that such compromises or settlements may not be entered into.

Respectfully,

THOMAS J. HERBERT,

Attorney General.