

is quite clear that before you issue a voucher covering the purchase price of this property, you should have before you evidence of the fact that the Conservation Council has by resolution, or other appropriate action, provided for the purchase of this property, which evidence in the form of minutes of the action of the Conservation Council in the premises should likewise be presented to the Auditor of State before a warrant is issued on said voucher.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2762.

STATE HIGHWAY PATROL—FINES OR FORFEITED BONDS OF PERSONS TRIED BEFORE JUSTICE OF THE PEACE—MONEY PAYABLE TO WHOM—ARREST MADE BY STATE HIGHWAY PATROLMEN.

SYLLABUS:

1. *All fines collected from, or moneys arising from, bonds forfeited by persons apprehended or arrested by state highway patrolmen and tried before a justice of the peace of a township which extends beyond the territorial limits of a city or incorporated village should be paid one-half into the state treasury and one-half into the county treasury, regardless of the fact that the trial is held at the office of the justice of the peace, whose office is located within the geographical limits of a city or incorporated village within the township.*

2. *In the event the boundaries of a township and those of a city or village are coextensive, the fines collected from, or moneys arising from, bonds forfeited by persons apprehended or arrested by state highway patrolmen and tried before a justice of the peace should be paid one-half into the state treasury and one-half into the county treasury.*

COLUMBUS, OHIO, May 29, 1934.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“Section 1181-5 of the General Code, effective June 29, 1933, provides for the distribution of fines collected and all moneys arising from bond forfeitures for persons apprehended or arrested by the State Highway Patrol, to be paid one-half to the state treasurer and one-half to the treasurer of the city or village where such case may be prosecuted. Provided, however, that such prosecution is in a trial court outside of an incorporated city or village, such money shall be paid one-half into the county treasury and one-half into the state treasury.

QUESTION 1: In case a trial is held in a justice's court should the fine be paid one-half to the state and one-half to the county, re-

ardless of the fact that the trial at the office of the justice may have been in a city or village located in the township?

QUESTION 2: In the event the boundaries of a township and those of a city or village are co-extensive, would the fine assessed and collected in a justice's court be payable one-half to the state and one-half to the county, or one-half to the state and one-half to the city or village?"

House Bill No. 270 (115 O. L. 95), enacted by the 90th General Assembly, created the Division of State Highway Patrol and provided that such body should enforce the laws relative to the registration and the use of motor vehicles upon the highways.

Section 1161-5, General Code, relative to the disposition of fines and referred to in your letter, reads in full as follows:

"All fines collected from, or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen shall be paid one-half into the state treasury and one-half to the treasury of the incorporated city or village where such case may be prosecuted. Provided, however, if such prosecution is in a trial court outside of an incorporated city or village such money shall be paid one-half into the county treasury. Such money so paid into the state treasury shall be credited to the 'state highway maintenance and repair fund' and such money so paid into the county, city or village treasury shall be deposited to the same fund and expended in the same manner as is the revenue received from the registration of motor vehicles.

The trial court shall make remittance of such money as prescribed by law and at the same time as such remittance is made of the state's portion to the state treasury such trial court shall notify the superintendent of the state highway patrol of the case or cases and the amount covered by such remittance.

All salaries and expenses of members of the state highway patrol and all expenditures for vehicles, equipment, supplies and salaries of clerical forces and all other expenditures for the operation and maintenance of the patrol shall be paid by the state treasurer out of the state highway maintenance and repair fund."

The difficulty presented by your first question is caused by the fact that while the jurisdiction of the justice of the peace may extend beyond the territorial limits of an incorporated city or village, often the justice of the peace lives within the limits of such city or village and, consequently, often holds court within the limits of the city or village. The pertinent part of the above section is the following:

"***Provided, however, if such prosecution is in a trial court outside of an incorporated city or village such money shall be paid one-half into the county treasury.***"

One possible interpretation of this clause is that if the trial is conducted within the territorial limits of a city or an incorporated village, no matter

before what court, the fees are to be paid into the treasury of the city or village. However, when the legislature used the words "if such prosecution is in a trial court," I think it meant to designate not the particular place where the trial was held but rather the particular type of court that is conducting the trial.

Section 6212-19, General Code, as enacted in 108 O. L., Pt. 2, 1184, read as follows:

"Money arising from fines and forfeited bonds shall be paid one-half into the state treasury credited to the general revenue fund, 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."

The Supreme Court of Ohio in construing the above statute in the case of *Barth vs. State, ex rel. Zielenka*, 107 O. S. 154, held as disclosed by the syllabus:

"Under the provisions of Section 6212-19, General Code, one-half of the money arising from fines and forfeited bonds resulting from the enforcement of the provisions of the state prohibition law, known as the Crabbe act, goes to the state treasury, and one-half thereof to the treasury of the county, municipality or township of the judge or magistrate before whom the prosecution is held."

The facts of the case showed that the defendant was the duly elected, qualified and acting justice of the peace within and for Millcreek Township, Hamilton County. It also appeared that the defendant tried various persons for violations of the Crabbe Act, which were all committed within the territorial limits of the City of Cincinnati. Likewise, the prosecution of these cases were all held by the justice of the peace within the limits of the City of Cincinnati, and the persons were convicted and fined. It was contended by the City of Cincinnati that one-half of the fines should be paid into the treasury of Cincinnati because the trials before the justice of the peace were held within the geographical limits of the City of Cincinnati. The Supreme Court, however, rejected this contention. The following language appears at page 158 of the opinion:

"If such prosecutions were before a county officer, for instance the common pleas judge or probate judge, that would be within a municipality and within a township, but it must be conceded that in such case one-half the fines would go into the treasury of the county; and so, if the prosecution were before a justice of the peace, whose office was within a municipality, which was a part of his township, concededly one-half of the fines would go into the treasury of the township before whose officer the prosecution was had. Surely it was not contemplated by the legislature that the subdivision which would receive one-half of the fines assessed in such cases could be arbitrarily determined by the officer before whom the prosecution was instituted by the mere physical change of his own location at the time of the hearing of the case."

The court in the above case was helped by the language of the last part of the statute which read as follows:

“*** according as to whether the officer hearing the case is a township, municipal, or county officer.”

While the language of section 1181-5, General Code, is not as clear as that construed in the above case, I am of the opinion the legislature contemplated exactly what was held in the above case. Obviously, any other conclusion would permit the justice of the peace to arbitrarily determine into which public treasury the money should be paid merely by holding court in or outside a municipality. I do not think the legislature intended such a situation in the enactment of section 1181-5, General Code.

It is therefore my opinion, in specific answer to your first question, that all fines collected from, or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen and tried before a justice of the peace of a township which extends beyond the territorial limits of a city or incorporated village should be paid one-half into the state treasury and one-half into the county treasury regardless of the fact that the trial is held at the office of the justice of the peace, whose office is located within the geographical limits of a city or incorporated village within the township.

In reference to your second question, I call your attention to section 3512, General Code, which reads as follows:

“When the corporate limits of a city or village become identical with those of a township, all township offices shall be abolished, and the duties thereof shall thereafter be performed by the corresponding officers of the city or village, except that justices of the peace and constables shall continue the exercise of their functions under municipal ordinances providing offices, regulating the disposition of their fees, their compensation, clerks and other officers and employees. Such justices and constables shall be elected at municipal elections. All property, moneys, credits, books, records and documents of such township shall be delivered to the council of such city or village. All rights, interests or claims in favor of or against the township may be enforced by or against the corporation.”

This office has taken the position that, by virtue of the provisions of section 1711-1, General Code, a justice of the peace is a township officer. See Opinions of the Attorney General for 1933, Volume I. page 299. The question is, therefore, presented whether or not the legislature in the enactment of section 1181-5, General Code, supra, intended that a different result should be reached from the one herein expressed in answer to your first question, because of the provision of section 3512. The legislature in the enactment of a law is presumed to have in mind existing laws. The language of section 3512 is very broad, and the part relative to justices of the peace and constables was no doubt inserted to meet the constitutional requirement that justices of the peace be elected. However, in 1912, this constitutional requirement was changed and the office of the justice of the peace is no longer a constitutional office. Section 3512 still preserves a separate identity of the justices

of the peace, even when the limits of a township become coterminous with the corporate limits of a city or village. In an opinion to be found in the Annual Report of the Attorney General for 1914, Volume II, page 1228, the following pertinent language is to be found at page 1229:

“Looking at section 3512, General Code, it is apparent that the effect of the territorial identity of the corporate limits and those of a township is not to abolish the township as a territorial subdivision of the state nor as an agency of civil government. It is the township offices and not the township that is abolished.

Furthermore, section 3512, General Code, provides that after the territorial merger takes place the duties of the township offices which have been abolished thereby shall be performed by the ‘corresponding officers’ of the municipality with certain exceptions. Giving to this language its exact effect, it would seem that municipal officers, in discharging such duties as might be designated as those of the abolished township offices, would be acting, not strictly as officers of the municipality, but as officers of the township. This may be conceded as a principle.”

While the question is not altogether free from doubt, I believe that the answer to your second question should be the same as the answer to your first question. In reaching this conclusion, I am aware of the following language quoted from the case of *Barth vs. State, ex rel. Zielenka, supra*, at page 157:

“The City of Cincinnati is in Cincinnati township, but the township and city have been merged, and duties formerly performed by officers of the township now devolve upon certain officers of the city. For the purpose of a consideration of the question here presented, therefore, it may be assumed that under the provisions of Section 3512, General Code, any claim which the township would have had but for such merger would now inure to the benefit of the city.”

Without unduly prolonging this discussion, it is my opinion, in specific answer to your second question, that in the event the boundaries of a township and those of a city or village are coextensive, the fines collected from, or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen and tried before a justice of the peace should be paid one-half into the state treasury and one-half into the county treasury.

Respectfully,

JOHN W. BRICKER,
Attorney General.