

866.

MUNICIPAL COURT—FINES AND PENALTIES IN STATE CASES COLLECTED BY CLERK OF CANTON MUNICIPAL COURT MUST BE PAID INTO CITY TREASURY.

SYLLABUS:

Fines and penalties collected by the clerk of the Municipal Court of Canton in all state cases should be paid into the city treasury as provided by Section 27 of the Canton Municipal Court Act (Section 1579-692, General Code), unless it be otherwise specifically provided by statute, as for example Sections 679, 1107-58, 1460, 6212-19, and certain others of the General Code.

COLUMBUS, OHIO, August 16, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your recent letter which reads:

“Section 1579-692 G. C. (Section 27 of the Canton Municipal Court Act, 111 O. L. 311) reads:

‘The clerk of the municipal court shall have power to administer oaths, and take affidavits, and to issue execution upon any judgment rendered in municipal court, including a judgment for unpaid costs; he shall have the power to issue and sign all writs, processes and papers, issuing out of the court, and to attach the seal of the court thereto; shall have power to approve all bonds, recognizances and undertakings required or authorized by any judge of the court or by law; shall file and safely keep all journals, books and papers belonging or appertaining to the court, record its proceedings and perform all other duties which the judge of the court shall prescribe. 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 and issue receipts therefor; he shall pay the same quarterly to the treasurer of the city of Canton, and take his receipts therefor, except as otherwise provided by law, and except that the provisions of Section 3056 of the General Code respecting payment to the trustees of law library association of fines and penalties assessed and collected by police courts for offenses and misdemeanors prosecuted in the name of the state shall be retained by him pending 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.’

Question: Are fines and forfeitures collected by the clerk of the Municipal Court of Canton in state cases payable into the county or city treasury when the statutes do not direct the disposition as provided in the Crabbe Act?”

I assume that you have in mind in connection with your question the provisions of Section 12378, General Code, which reads:

“Unless otherwise required by law, an officer who collects a fine, shall

pay it into the treasury of the county in which such fine was assessed, to the credit of the county general fund within twenty days after the receipt thereof, take the treasurer's duplicate receipts therefor and forthwith deposit one of them with the county auditor."

The above statute is a general one on the subject and has been in force in Ohio for more than fifty years. In accordance with its provisions, all officers collecting fines and penalties in state cases are obliged to pay them, when collected, into the county treasury, "*unless otherwise required by law.*"

Confusion has arisen in recent years as to the application of the above statute, because of the creation of many municipal courts in various cities of the state by the general assembly, in which acts there usually appears a section similar to the one which you quote from the Canton Municipal Court Act.

In a recent case before the Supreme Court of Ohio, *State ex rel., vs. Cleveland*, 115 O. S. 484, the court had under review a provision of the Municipal Court Act of Cleveland reading substantially as the one here under consideration, except that the Cleveland statute did not contain the provision found in the Canton Act quoted by you, reading "except as otherwise provided by law."

In that case a controversy arose between the State of Ohio and the City of Cleveland as to the disposition of fines and forfeited bonds collected by the clerk of the municipal court of Cleveland in state cases prosecuted in the municipal court for violations of the Crabbe Act (Section 6212-13 and related sections of the General Code). Section 6212-19 reads 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 City of Cleveland claimed the right to retain all the fines collected, including those for violation of the Crabbe Act, by virtue of the provisions of the Municipal Court Act of Cleveland, Section 1579-41, General Code, passed May, 1915, (106 v. 288) which read in part:

"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, and shall pay therefrom annually six hundred dollars in quarterly installments to the trustees of the law library association as provided for in division IV, chapter 1 of the General Code, and shall pay the balance thereof quarterly to the treasurer of the City of Cleveland and take proper receipts therefor
* * * ."

The Supreme Court ruled in favor of the State of Ohio. In the opinion, at pages 487-488, Judge Jones, among other things, said:

"It is manifest therefore that the Crabbe Act of 1920 was a general act dealing specifically with the liquor traffic and its enforcement, while the Municipal Court Act, though a special one applying to the City of Cleveland, dealt with general subjects, such as giving civil and criminal jurisdiction to its municipal court and providing for the disposition of fines imposed by that court for the violation of all criminal offenses. Since the

Legislature in its act of 1920 confined its legislation to the subject of prohibition enforcement only, it is very evident that its purpose and intent was to segregate from the Municipal Court Act, such fines as may have been imposed for violation of the 'Crabbe Act.' It dealt specifically with such fines, and provided that one-half of the moneys arising therefrom should be paid into the state treasury. There is no doubt that the purpose of the later legislation was to exempt these particular fines from the operation of the earlier act. For all other purposes the Municipal Court Act was left intact."

Applying the reasoning of Judge Jones, *supra*, to the pertinent provisions of the two acts here under consideration, the conclusion would seem logically to follow that the Municipal Court Act of Canton is a special one specifically providing for the disposition of fines imposed for the violation of all criminal offenses "except as otherwise provided by law." Section 12378, General Code, by the reasoning of Judge Jones in the Cleveland case, *supra*, likewise would be classed as a general statute as to the payment of fines in state cases into the county treasury, and especially so since it contains the provision therein "unless otherwise required by law."

In the case of *City of Cincinnati vs. Holmes, Admr. et al.*, 56 O. S. 104, Judge Minshall, at page 115, adverts to the following rule of construction:

"I know of no rule of construction of statutes of more uniform application than that later or more specific statutes do, as a general rule, supersede former and more general statutes, so far as the new and specific provisions go."

The general rule upon this subject is stated in 36 Cyc. p. 1151, thus:

"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."

I think it is manifest, when the rules above stated are applied to the provisions of the two statutes here under consideration, that the Canton Act is a special one, though dealing with general subjects as to criminal and civil jurisdiction, and that the provisions of the act, specifically providing for the payment of the fines and penalties collected into the city treasury, include fines and penalties in state cases, except where the payment of fines and penalties into other treasuries is specifically "otherwise provided by law" in cases under particular statutes. The latter class of cases are ones wherein statutes expressly and specifically provide that the moneys arising from fines, penalties and forfeited bonds shall be paid into the state treasury, to be there credited to certain designated funds. See for example Section 679, General Code, pertaining to fines imposed for violation of the mining laws; Section 1460, pertaining to the fish and game laws; Section 6212-19, making provision for the disposition of fines in liquor cases; Section 1107-58, relating to fines imposed for violation of the rules of the Secretary of Agriculture, etc.

In an opinion of my predecessor, reported in Opinions, Attorney General, 1925, page 341, wherein the question as to the disposition of fines collected for violation

of Sections 614-84 to 614-102, General Code, inclusive, pertaining to motor transportation companies was under consideration, it was held:

"Fines for violations of Sections 614-84 to 614-102, General Code, inclusive, are payable into the treasury of the county wherein such fine is levied, unless the law establishing a municipal court, in which such a case is tried, should otherwise provide."

I also find in the Opinions of the Attorney General for the year 1922, Volume II, page 1077, a question similar but not identical to the one here under discussion was considered, and it was there decided with reference to the Municipal Court Act of Zanesville, Ohio, that:

"Fines and costs assessed and collected in state cases by the Municipal Court of Zanesville, should be paid into the city treasury in compliance with the provisions of Sub-section 25 of Section 1579-354 of the General Code." (Syllabus 2)

At page 1081 it was said:

"It would seem then to be concluded that the jurisdiction of the Municipal Court of Zanesville, in so far as state cases are concerned, is conferred upon said court by provision of statute rather than by terms of the city charter. Hence it is thought to follow that disposition of fines in state cases assessed and collected by such court, could be in conformity with the general provisions of the statutes which confer upon said municipal court jurisdiction in the instance.

In specific answer then to your first question it is believed that the fines and costs assessed and collected by such municipal court for violation of statute, should be in conformity to the provisions of Sub-section 25 of Section 1579-354 of the General Code, be paid quarterly to the treasurer of the City of Zanesville, Ohio.

Since conclusion has been reached, that the provisions of the city charter relative to the disbursements of fines and costs collected by the municipal court in cases involving violation of statute, do not take precedence over similar statutory provisions, for the reasons assigned, it would follow from the same process of reasoning, that fines assessed and collected by said municipal court for violations of the Crabbe Act, as indicated in your second question, should be paid one-half into the city treasury and one-half into the state treasury as provided by Section 6212-19 of the General Code."

Answering your question specifically, I am of the opinion that the fines and penalties collected by the clerk of the Municipal Court of Canton in all state cases, unless it be specifically provided by statute otherwise, should be paid into the city treasury as provided by Section 27 of the Canton Municipal Court Act (Section 1579-692, General Code).

Respectfully,
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Attorney General.