3437.

APPROVAL, BONDS, VILLAGE OF SILVER LAKE, SUMMIT COUNTY, OHIO, $21,000.00, DATED MARCH 1, 1938.

COLUMBUS OHIO, December 21, 1938.

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

RE: Bonds of Village of Silver Lake, Summit County, Ohio, $21,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above village dated March 1, 1938. The transcript relative to this issue was approved by this office in an opinion rendered to the Industrial Commission under date of June 22, 1938, being Opinion No. 2622.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said village.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

3438.

MUNICIPAL COURT JUDGE—NOT REQUIRED BY SECTION 4213 G. C. TO PAY INTO CITY TREASURY FEES RECEIVED FOR PERFORMANCE OF MARRIAGE CEREMONIES — JURISDICTION — BEYOND MUNICIPAL LIMITS.

SYLLABUS:

Section 4213, *General Code, does not require a judge of a municipal court having jurisdiction beyond the limits of the municipality to pay into the city treasury fees received for performing marriage ceremonies.*

COLUMBUS OHIO, December 21, 1938.

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

Your letter of recent date is as follows:

"We are enclosing herewith two letters from a Judge of a Municipal Court, dated August 9th and 12th respectively, and our answer to the first letter.

Since the Judge indicated in the second letter that the statutes to which we refer may not be applicable to the situation and since the question is one that may arise in any one of the many Municipal Courts of this state, may we request that you examine this correspondence and give us your opinion on the following question:

May the Judge of the Municipal Court of the City of Conneaut perform marriage ceremonies and retain the fee received for such services for his personal use, or should he deposit said fees in the city treasury?"

The second communication from the Judge of the Municipal Court of Conneaut attached to your letter reads as follows:

"I want to thank you for your letter of August 10th, in which you advise that Judges of Municipal Courts should pay into the city treasury fees received for the performance of marriage ceremonies, and you quote Sec. 4213 G. C.

That section is found under the title of Municipal Corporations and I was of the opinion that the provision therein that all fees received by officers and employees should be paid into the city treasury pertained only to city officers and employees, and I have thought that a Judge of a Municipal Court, the territory of which comprises a city and one or more townships, was not a municipal officer, but an officer of a district.

His nomination petition, as prescribed by the election board, is for a district office; he is elected by the voters of the municipality and of the township; and he draws his salary from the city, township and county. This is not a court of the *City* of Conneaut, the title of the court being the Municipal Court of Conneaut, Ohio.

I dislike to bother you over this small matter, further, but would appreciate your views in light of what I have stated."

Section 4213, General Code, referred to in the judge's letter, requires all fees pertaining to any municipal office to be paid into the city treasury in the following language:

"The salary of any officer, clerk er employe shall not be increased or diminished during the term for which he was elected or appointed, and, except as otherwise provided in this title, all fees pertaining to any office shall be paid into the city treasury."

It is accordingly necessary to determine whether or not the judge of the municipal court which has jurisdiction beyond the territorial limits of the municipality is a municipal officer.

The text in 23 O. Jur. 421 is as follows:

> "A judge of a municipal court is a municipal and not a state officer. Therefore the legislature may delegate to city council the power to fix his compensation."

There is cited in support of the foregoing text the case of *State, ex. rel. Thompson,* vs. *Wall,* 17 N. P. (N. S.) 33, 28 O. D. (N. P.) 631, which case is noted as affirmed by the Court of Appeals.

An examination of this decision, however, discloses that the court was there concerned with the office of a judge of a municipal court which then exercised no jurisdiction beyond the territorial limits of the City of Dayton. This view was adopted by the court, as appears on page 36 of the opinion:

> "The jurisdiction conferred is found at Section 6 of the act which provides that the municipal court shall have the same jurisdiction in criminal matters and prosecutions for misdemeanors or violations of ordinances as heretofore had by the police court of Dayton, and in addition thereto shall have ordinary civil jurisdiction within the limits of said city of Dayton in the following cases:"

This case is accordingly not declarative of the law as applicable to a municipal court the jurisdiction of which by act of the legislature extends beyond the limits of the municipality.

In McQuillin on Municipal Corporations, Second Edition, Vol. 1, page 546, the text is as follows:

> "While it is true that the state grants the charter under which a city is organized and acts, yet those elected in obedience to that charter perform strictly municipal functions, and do not act in obedience to state laws in the manner enjoined upon state officers. Therefore the mayor was held not to be a state officer. It has been said in a New York case that 'in a more restricted sense the mayor, comptroller, treasurer, corporation counsel and like general officers elected on the general ticket, or appointed for the municipality are regarded as municipal officers. But in the broad sense municipal officers include all local, elective or appointive officers including appointees under the civil service

law.' Municipal officers are, therefore, those whose functions relate to purely municipal affairs and who act in obedience to charter and ordinance provisions."

I find no authority to support the position that officers whose functions are not confined to purely municipal affairs are municipal officers. *People* vs. *Court General Sessions,* 13 Hun. (N. Y.) 395, held that a civil officer of a city district court was not a city officer. In *Burch* vs. *Hardwicke,* 30 Gratt. (Va.) 24, 33 the court said, among city officers "are perhaps, city engineers and surveyors, officers having superintendence and control of streets, parks, water works, gas works, hospitals, sewers, cemeteries, city inspectors and no doubt many others well known in large cities. Their duties and functions relate exclusively to the local affairs of the city and the city alone is interested in their conduct and administration. To the same effect is *State* vs. *Bean,* 63 N. H. 249, referred to by McQuillin, supra, on page 548, in support of the statement that a determination of whether one is a state or a municipal officer depends upon the nature and extent of his jurisdiction and the functions which he has to perform.

A somewhat analogous question was under consideration in an opinion of this office appearing in Opinions of the Attorney General for 1919, Vol. 1, page 372, the first branch of the syllabus of which reads as follows:

"Mayors of cities are entitled to fees collected in cases tried before them for violations of state statutes."

The then Attorney General was confronted with the question as to whether or not the judge of the Municipal Court of East Cleveland was entitled to retain his fees in state cases. The opinion in the case of *Piqua* vs. *Cron,* 2 N. P. (N. S.) 165, was cited. This case held that Section 4213, supra, did not require mayors of cities to pay into the city treasury fees and costs collected in cases tried before them for violation of the criminal statutes of the state. The then Attorney General also considered the case of *Portsmouth* vs. *Milstead,* 8 C. C. (N. S.) 114, affirmed by the Supreme Court 76 O. S. 597. In this last mentioned case the court in construing Section 1536-633 R. S., now Section 4213, General Code, said at page 116:

"When the legislature provided that all fees 'pertaining to any office' shall be paid into the city treasury, did it intend more than the fees pertaining to the office of the mayor, and such as arose from duties purely municipal? * * *

The state fixes and controls the amount and character of fees in state cases, and has delegated to municipal councils au-

thority to fix the fees for violation of its municipal laws. The scheme of legislation recognizes the distinction between the jurisdiction, powers and duties of the mayor, and such as he exercises as an ex-officio justice of the peace. * * *

It would seem, therefore, that * * * 'all fees pertaining to any office,' under the rule established in *Ravenna* vs. *Penn.* Co. (45 O. S. 118) refers to municipal fees or such that may be fixed and controlled by municipal authority."

Specifically answering your question, it is my opinion that the Judge of the Municipal Court of Conneaut is not required by the provisions of Section 4213, General Code, to pay into the city treasury fees received by him for the performance of marriage ceremonies.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

3439.

MINOR—BETWEEN AGES SIXTEEN AND TWENTY-ONE YEARS—WHERE ACT COMMITTED WOULD BE A FELONY IF COMMITTED BY ADULT—SECTION 1639-2 G. C. PROVIDES JURISDICTION MAY BE TRANSFERRED FROM JUVENILE COURT TO COMMON PLEAS COURT—COMMITMENT—IF CASE NOT TRANSFERRED, JUVENILE COURT MAY COMMIT MINOR TO INSTITUTIONS MENTIONED IN SECTION 1639-30 G. C.

SYLLABUS:

1. *The case of a boy between the ages of sixteen and twenty-one who has committed an act which, if committed by an adult would be a felony, may be transferred, under the provisions of Section* 1639-32, *General Code, to the Common Pleas Court. If the said boy is found guilty of the felony charged, it is then the duty of the court to commit the boy to the Ohio State Reformatory in accordance with Section* 2131, *General Code.*

2. *If the juvenile court decides not to transfer the case of a boy between the ages of sixteen and twenty-one who has committed an act which, if committed by an adult would be a felony, but determines that*