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MUNICIPAL COURT, CLEVELAND, CLERK OF—IN ADDITION TO MAXIMUM SUM OF SIX HUNDRED DOLLARS REQUIRED BY SECTION 1579-41, G. C., TO BE PAID BY CLERK OF SUCH COURT TO TRUSTEES OF LAW LIBRARY ASSOCIATION FROM COSTS, FINES AND PENALTIES COLLECTED, CLERK IS ALSO REQUIRED TO PAY MONEYS RECEIVED FROM FORFEITED DEPOSITS, FORFEITED BAIL BONDS AND FORFEITED RECOGNIZANCES UP TO MAXIMUM FIXED BY SECTION 3056, G. C., FOR ALL SUCH PAYMENTS.

SYLLABUS:

In addition to the maximum sum of six hundred dollars required by Section 1579-41, General Code, to be paid by the clerk of the Municipal Court of Cleveland to the trustees of the law library association, from costs, fines and penalties collected, said clerk is also required to pay to said association, pursuant to Section 3056, General Code, moneys received from forfeited deposits, forfeited bail bonds and forfeited recognizances, up to the maximum fixed by said Section 3056 for all such payments.

Columbus, Ohio, November 1, 1945

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have before me your request for my opinion, reading as follows:

"In your Opinion No. 446, dated September 12, 1945, you advised this Department that the provisions of Section 1579-41, G. C., prevail over those of Section 3056, G. C., relative to the amount of money to be paid by the Clerk of the Cleveland Municipal Court to the Cleveland Law Library Association.

In this connection may we call to your attention a slight difference in the language of the two sections, as follows:

Section 1579-41, G. C., provides for the disposition of '*all costs, fines and penalties*' collected by the Clerk of the Cleveland Municipal Court, while Section 3056, G. C., provides for disposition of '*all moneys * * * accruing from fines, penalties, forfeited deposits or forfeited bail bonds or forfeited recognizances * * **' together with the application of costs in state cases, for computation of the sum of money due and payable to the law library association.

In this connection may we inquire if your Opinion No. 446, is meant to cover the collections by the Clerk of the Cleveland Municipal Court as named in Section 1579-41, G. C., exclusively, or does your ruling apply to all of the collections by said Clerk as detailed in Section 3056, General Code?"

In my former opinion No. 446 to which you refer, my attention was directed specifically to the point raised by your request, reading as follows:

"May we request your opinion as to the proper interpretation of the law that should govern the clerk of the Cleveland Municipal Court in the distribution of moneys coming into his hands as collections of fines and penalties in the Criminal Division of the Court."

My holding, as stated in the syllabus, was as follows :

“The provisions of Section 1579-41 of the General Code, being part of the act creating and defining the powers of the Municipal Court of the City of Cleveland, prevail over the provisions of Section 3056, General Code, and the Clerk of the Municipal Court of Cleveland is authorized and required to pay to the county law library association in accordance with the provisions of said Section 1579-41, General Code.”

I did not, therefore, give attention to the fact that Section 3056, General Code, provides for the disposition and payment, within certain limitations, to a county law library of forfeited deposits, forfeited bail bonds and forfeited recognizances. The authorities cited in that opinion holding that the provisions of a municipal court act are to be given effect over said Section 3056 were rendered at a time when the provisions of Section 3056 did not contain any reference to moneys arising from such forfeitures, but were limited to fines and penalties. That opinion should, in view of the question you now raise, be amplified.

In the amendment of said Section 3056, effective in 1939, it was made to read, in part, as follows :

“All monies collected by a municipal corporation, accruing from fines, penalties, *forfeited deposits or forfeited bail bonds or forfeited recognizances* taken for appearances, by a municipal court, police court or mayor’s court * * * shall be retained by the clerk of such municipal, police, or mayor’s court, and be paid by him forthwith, each month, to the trustees of such law library association in the county in which such municipal corporation is located, * * *

Provided, however, that the total amount paid hereunder in any one calendar year by the clerks of all municipal, police and mayor’s courts in any one county to the trustees of such law library association shall in no event exceed \$7,500.00 and the maximum amount paid by any one of such courts shall in no event exceed \$3,000.00 in any one calendar year.”

(Emphasis added.)

The pertinent portion of Section 1579-41, General Code, relating to the duties of the clerk of the Municipal Court of Cleveland reads as follows :

“* * * 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. * * *.”
(Emphasis added.)

It would appear clear that the inconsistency between said Sections 3056 and 1579-41, and resulting in a partial repeal by implication of said Section 3056 is confined to those portions of Section 3056 which are necessarily in conflict with the provisions of the Cleveland Municipal Court law. In other words, the moneys realized from the collection by the clerk of the Cleveland Municipal Court from costs, fines and penalties are to be paid to the county law library up to the sum of \$600, the balance going to the treasury of the city; but the moneys collected arising from the forfeitures mentioned in Section 3056 are also to be paid, in accordance with the provisions of that section, to the said law library until it has received in the aggregate from both sources the maximum allowance fixed by said Section 3056. This gives effect to both sections so far as there is no inconsistency.

In the case of *State, ex rel. Library Association vs. Welker*, 47 Oh. App., 42, it was held:

- “1. Special act conflicting with general law will prevail.
2. General statute, requiring municipal court clerks to pay fines and penalties collected to county law library associations, is inapplicable to municipal court created by special act containing conflicting provisions.
3. Statutes must be construed so as to give them effect, if possible.
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.”

The act creating the Municipal Court of Lima, which was there under consideration, contained a provision almost identical with that contained in Section 1579-41, General Code, relating to the Cleveland Municipal Court, and reading as follows:

“He (the clerk of the municipal court) shall pay over to the proper parties all monies received by him as clerk; he shall receive

and collect all costs, fines and penalties, and shall pay therefrom annually five hundred dollars in quarterly installments to the Allen county law library association as provided for in Title X, division IV, chapter 1, of the General Code and shall pay the balance thereof monthly to the treasurer of the city of Lima and take proper receipts therefor, but money deposited as security for costs shall be retained by him pending the litigation * * *."

The chapter there referred to is the chapter which comprises Sections 3054 to 3058 both inclusive, relating to law libraries. Commenting on this incorporation by reference, the court said at page 48, of the opinion :

"It is an elementary rule of statutory construction that statutes are to be construed so as to give them effect if possible, and that repeals by implication are never favored. Where there is a conflict between the express provisions of a statute and the provisions of another statute incorporated in that statute by reference, the express provisions of the statutes are to be given effect over conflicting provisions of the statute incorporated by reference, and *the provisions of such incorporated statute are to be restricted to matters regarding which there is no conflict.*"

(Emphasis added.)

The plain inference from the statement just quoted, particularly the portion emphasized, is that in so far as the provisions of Section 3056 are not in conflict with the express provisions of the special municipal court act, they are to be considered as untouched and not repealed by any implication.

It is accordingly my opinion that in addition to the maximum sum of six hundred dollars required by Section 1579-41, General Code, to be paid by the clerk of the Municipal Court of Cleveland to the trustees of the law library association from costs, fines and penalties collected, said clerk is also required to pay to said association, pursuant to Section 3056, General Code, moneys received from forfeited deposits, forfeited bail bonds and forfeited recognizances, up to the maximum fixed by said Section 3056 for all such payments. This opinion is by way of supplement to Opinion No. 446, rendered September 12, 1945.

Respectfully,

HUGH S. JENKINS

Attorney General