

construction noted in the case of *Marqua vs. Martin*, supra, it must be held that neither the county commissioners nor the county auditor are authorized to cause suit to be brought against the county treasurer and his sureties under this section of the General Code, unless instructions for that purpose are received from the auditor of state. Aside from any other question with respect to the application of Section 2695, General Code, suggested by the facts stated in your communication or omitted therefrom, it does not appear that said action was instituted on instructions for the purpose received from the auditor of state. Inasmuch as the provisions of Section 2695, General Code, provide for a penalty, they should be strictly construed, "and the meaning and application thereof can not be extended by judicial interpretation beyond the plain letter of the statute." *Marqua vs. Martin*, supra.

Although in a case properly brought under the provisions of Section 2695, General Code, a recovery may be had on the official bond of a defaulting county treasurer for the amount due and the penalty provided for by said section, it does not appear from your communication that the pending action is one properly brought under the provisions of this section; and, for this reason, I am of the opinion that no penalty can be recovered in said action on the official bonds of the defaulting county treasurer mentioned in your communication.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1774.

FEES—MARRIAGE FEES OF MUNICIPAL COURT OF CINCINNATI.

SYLLABUS:

Where fees for solemnizing marriages have been retained by judges of the Municipal Court of Cincinnati in pursuance of specific advice from the Attorney General, no findings against such officials should be made for fees retained prior to the issuance of Opinion No. 1295, dated November 25, 1927.

COLUMBUS, OHIO, February 28, 1928.

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

GENTLEMEN:—Referring to Opinion No. 1295, rendered to your department under date of November 25, 1927:

I am in receipt of the following letter from Honorable John D. Ellis, City Solicitor of Cincinnati:

"The Bureau of Inspection and Supervision of the State of Ohio has referred to me your opinion under date of November 25, 1927, relating to the right of Municipal Judges to retain marriage fees collected by them.

Judge Samuel W. Bell, the presiding judge of our Municipal Court, has also handed me two letters of Attorney General Crabbe, one dated January 19, 1925, and the other January 22, 1925, which appear to be in conflict with your most recent opinion. I do not know whether or not you had these rulings of Mr. Crabbe before you, and I am simply writing to inquire whether or not they would cause you to change your opinion in any way."

On January 16, 1925 (letter dated erroneously 1924), Honorable Samuel W. Bell, presiding judge of the Municipal Court of Cincinnati, wrote the following letter to the then Attorney General:

"I am writing on behalf of the judges of Municipal Courts of Cincinnati for an opinion from you, if you please, as to whether or not the judges are entitled to the fees accruing from marriage ceremonies performed by them under the statute creating our court."

Under date of January 19, 1925, the following letter went to Judge Bell over the signature of the then Attorney General:

"This will acknowledge receipt of your letter of January 16th, asking if judges of the Municipal Court of Cincinnati may keep fees accruing from marriage ceremonies.

While such judges are salaried officers and must turn in all legal fees, you will find since the repeal of Section 11192, General Code, there are no legal fees for solemnizing marriages.

In view of this fact, I am of the opinion that anything such judges may be paid for such services may be kept by them for their own personal use. I find no cases covering this point. The cases holding certain officers cannot keep fees are under statutes clearly preventing them from doing so."

Thereafter, under date of January 21, 1925, Judge Bell again wrote the Attorney General as follows:

"I am writing to acknowledge with thanks and appreciate the receipt of your favor of the 19th inst. advising that in your judgment judges of the Municipal Court may retain for their personal use fees accruing from marriage ceremonies.

Permit me to call your attention to Section 1746-2 of Baldwin's Ohio Code (1924 Supplement), which fixes the fees for justices of the peace for solemnizing marriages at \$3.00 and request if the reading of this section would change your opinion of the 19th inst."

On January 22, 1925, the following letter went out of this office addressed to Judge Bell over the signature of the Attorney General:

"Received your letter of January 21st, referring to Section 1746-2 of the General Code, as affecting the right of Cincinnati Municipal Court Judges to keep amounts paid them for performing marriages.

This does not change the situation as there is nothing in your act making justice fees apply to you or your court.

Section 1746-2, General Code, would apply to Columbus, and this Department so held several years ago, as their fees are the same as justices.

I still believe you may keep any donations made you for performing marriage ceremonies, there being no legal fee fixed for the act, nor any prohibition against it."

While neither of the above letters from this office were treated by the then Attorney General as formal opinions, yet this was not known to Judge Bell and his associates.

I am of the opinion that where officials have relied upon the specific advice of the Attorney General in the matter of retaining such fees, a court in equity and good conscience would decline to sustain any finding which you might make against Judge Bell and his associates prior to the issuance of Opinion No. 1295, under date of November 25, 1927. Therefore, I think you should give prospective effect only to Opinion No. 1295.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1775.

MUNICIPAL COURT OF AKRON—DISPOSITION OF COSTS AND FINES
COLLECTED UNDER SECTIONS 1579-536 AND 4599, GENERAL CODE.

SYLLABUS:

1. *In state cases instituted in the Municipal Court of Akron the costs and fines collected, by the terms of Sections 1579-536 and 4599, General Code, are payable to the treasury of the County of Summit by the Clerk of the Municipal Court.*
2. *Opinion No. 1633 reconsidered and corrected.*

COLUMBUS, OHIO, February 28, 1928.

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

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

“In Opinion No. 1633 dated January 30, 1928, Section 1579-536, G. C., relative to the powers and duties of the Clerk of the Municipal Court of Akron, was cited as authority for the conclusion that fees and costs accrued in such court in felony cases should be paid over to the municipal court clerk when collected from the state and should be deposited in the city treasury.

Section 1579-314, G. C., relative to the powers and duties of the Municipal Court of Toledo, before amendment 112 O. L. 219, contained provisions relative to the disposition of costs, fees, fines and penalties which were similar to those found in 1579-536, G. C.

Section 1579-314 was considered by the Attorney General in Opinion No. 576 to be found at page 1026 of his opinions for the year 1919 and the conclusion reached that fines and costs collected by the clerk of the Toledo Municipal Court, in state cases were payable to the county treasury.

QUESTION: Are costs collected by the Clerk of the Municipal Court of Akron in state criminal cases other than felonies, payable into the municipal treasury?”

The several sections of the General Code relating to the Municipal Court of Akron appear as Sections 1579-497 to 1579-549, both inclusive, of the General Code.

Section 1579-508, General Code, defines the criminal jurisdiction of the Municipal Court of Akron and, in so far as pertinent, provides: