

OPINION NO. 74-056

Syllabus:

A municipality is entitled to its pro rata share in redistribution of unexpended or unencumbered funds of the county law library association, pursuant to R.C. 3375.56, when such funds were collected by the municipality from fines and forfeited bonds pursuant to R.C. 5503.04 and paid to the association.

To: Forrest H. Bacon, Wyandot County Pros. Atty., Upper Sandusky, Ohio
By: William J. Brown, Attorney General, July 11, 1974

I have before me your request for my opinion which reads as follows:

"By the cooperative efforts of the County Auditor, the Municipality of Upper Sandusky and the Wyandot County Law Library Association, the following questions are being submitted through this office.

"The factual situations are these: The Upper Sandusky Municipal Court from fines and bond forfeitures arising from arrests made by State Highway Patrol, pays to the Municipal Treasurer 45% of all such monies under authority of Section 5503.04 of the Revised Code of Ohio.

"In turn, the Municipal Corporation pays 50% of all such monies to the Wyandot County Law Library Association. At the end of the calendar year, the Law Library Association makes an accounting to the County Auditor for receipts and expenditures during the year and requests direction of the Auditor for redistribution of 90% of any unexpended or unencumbered balance on a pro rata basis and in accordance with the Ohio Revised Code Section 3375.56.

"The question for which we would appreciate an answer is as follows: Is the Municipality of Upper Sandusky entitled to its pro rata share in redistribution of unexpended or unencumbered funds of the Law Library Association when such contributions were originally paid by the Municipality out of its 45% of State Highway arrest cases under Section 5503.04?

"This question arises due to the fact that the County Examiner has been following a 1948 OAG 3977, which opinion was rendered prior to the enactment of Section 5503.04 of the R.C. and is therefore of doubtful validity because it did not take into consideration Section 5503.04 as far as it concerns the pro rata distribution back to the contributing parties."

R.C. 5503.04 provides in part as follows:

"All fines collected from or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen shall be paid forty-five per cent into the state treasury and fifty-five per cent to the treasury of the municipal corporation where such case is prosecuted if in a mayor's court. If such prosecution is in a trial court outside a municipal corporation or outside the territorial jurisdiction of a municipal court, such moneys shall be paid fifty-five per cent into the county treasury. Such moneys paid into the state treasury shall be credited to the state highway maintenance and repair fund. The moneys paid into a county treasury and the moneys paid into the treasury of a municipal corporation shall be deposited one half to the same fund and expended in the same manner as is the revenue received from the registration of motor vehicles, and one half to the general fund of such county or municipal corporation.

"If such prosecution is in a municipal court, forty-five per cent of such moneys shall be paid into the state treasury to be credited to the state highway maintenance and repair fund, ten per cent to the county treasury, and forty-five per cent to the municipal treasury to be credited to the general fund of such county or municipal corporation. In the Portage county municipal court, that portion of money otherwise paid into the municipal treasury shall be paid into the county treasury.

General Code section 1183-4, which became effective in 1945 (121 Ohio Laws 455, 521) contained language substantially similar to R.C. 5503.04. It was in effect at the time Opinion No. 3977, Opinions of the Attorney General for 1948, page 529, mentioned in your request, was rendered.

R.C. 3375.56 provides as follows:

"On the first Monday of each year, the board of trustees of the law library association shall make a detailed statement to the county auditor, verified by the oath of the treasurer of the association, of the amount of the fines and penalties received under sections 3375.50 to 3375.53, inclusive, of the Revised Code, and of the money expended by the association.

"If the total amount rendered under such sections during the preceding calendar year covered by such report exceeds the expenditures during the same period, the auditor shall certify such fact to the board which shall thereupon direct the treasurer of the association to refund proportionately to the treasurers of the political subdivisions from which such balance was received, not less than ninety per cent of any unencumbered balance on hand from the preceding year."

(Emphasis added.)

It is the clear intent of this statute that all monies from fines and penalties received under R.C. 3375.50 to 3375.53 are to be redistributed by the treasurer of the county law library association.

In the case of State ex rel. Bd. of Trustees of the Akron Law Library Ass'n. v. Vogel, 169 Ohio St. 243 (1959), the Ohio Supreme Court considered whether a municipal treasurer was required to pay 50% of the monies received by the municipal treasury under the provisions of R.C. 5503.04 to the board of trustees of the county law library association under R.C. 3375.53. R.C. 3375.53 provides in pertinent part as follows:

"In each county, fifty per cent of all moneys arising from fines and penalties and from forfeited deposits and forfeited bail bonds and recognizances taken for appearances on account of offenses brought for prosecution in any court in such county under Chapters 4301. and 4303. of the Revised Code and the state traffic laws shall be paid monthly by the treasurer of the county or municipal corporation to the board of trustees of the law library association in such county, * * *."

(Emphasis added.)

The Ohio Supreme Court noted that monies arising from R.C. 5503.04 are usually in connection with state traffic laws. The Court concluded that R.C. 3375.53 and R.C. 5503.04 must be read in pari materia, and therefore, 50% of the funds distributed to the municipal treasury in accordance with R.C. 5503.04 must be paid to the board of trustees of the county law library association as provided in R.C. 3375.53. See also, State ex rel. Akron Law Library Ass'n. v. Weil, 16 Ohio App. 2d 151 (1968). Since 50% of those funds being received by the municipal treasury for violations of state traffic laws under R.C. 5503.04 are required by the provisions of R.C. 3375.53 to be paid to the county law library association, such monies received by the county law library association are amounts received under R.C. 3375.53, which may be redistributed according to the provisions of R.C. 3375.56.

It is now necessary to consider what treasury should receive such funds redistributed under R.C. 3375.56. That Section provides that the funds are to be redistributed pro rata to the treasurers of the political subdivisions from which they were received. The Court in Van Wert County Law Library Ass'n v. Stuckey, 42 Ohio Op. 1 (C.P. Van Wert 1949), stated as follows:

"The pro-rata returnable under G.C. §3056 [R.C. 3375.56] is to be made to the subdivision entitled to retain the funds rather than from the subdivision paying the fund. * * * Thus, the test in determining the pro-rata return of 90 per cent of the balance each year is a determination of what treasury would be actually entitled to such monies except for G.C. §§3056, 3056-1, 3056-2 and 3056-3 [R.C. 3375.50, 3385.51, 3375.52, 3375.53]."

Opinion No. 3977, supra, provided a similar basis for redistribution under R.C. 3375.56. Syllabus two of that opinion reads as follows:

"In so far as such moneys are by the general law, except for the provisions of Section 3056, General Code [R.C. 3375.50], to be paid into the treasury of the county, the mayor and clerk of a police or municipal court in collecting and so disposing of said moneys are acting as the agents of the county, and the refunds provided by Section 3058, General Code [R.C. 3375.56], should as to such funds be paid by the treasurer of the law library association to the treasurer of the county."

While this opinion dealt with redistribution of monies received by the county law library association through the provisions of R.C. 3375.50 (then G.C. 3056) rather than R.C. 3375.53, the holding of the opinion was an application of the test delineated by the Court in Van Wert, *supra*, which is equally applicable to funds received by the association under R.C. 3375.53.

When that test is applied to the present situation, it is obvious that the funds in question should be redistributed to the municipal treasury. If it were not for R.C. 3375.53, which requires the payment of such monies to the county law library association, the monies would have been distributed to the municipal treasury under R.C. 5503.04. It is made clear by the Ohio Supreme Court in State ex rel. v. Vogel, *supra*, that R.C. 5503.04 is a special statute providing for the disbursement of funds within its provisions. See Opinion No. 1132, Opinions of the Attorney General for 1952, page 107. Therefore, the 50% of the funds received by the municipality under R.C. 5503.04 which are paid to the county law library association are not by general law to be paid into the county treasury, but are rather specifically directed by R.C. 5503.04 to be paid into the municipal treasury. Thus, the municipal treasury is the appropriate treasury to receive the redistribution of such funds under R.C. 3375.56.

Opinion No. 3977, *supra*, is distinguishable from the instant fact situation because it involved only funds which would have been paid to the county treasurer absent the provisions of R.C. 3375.50 *et seq.* Thus, the county treasury alone was entitled to redistribution of such funds.

In specific answer to your question, it is my opinion and you are so advised that a municipality is entitled to its pro rata share in redistribution of unexpended or unencumbered funds of the county law library association, pursuant to R.C. 3375.56, when such funds were collected by the municipality from fines and forfeited bonds pursuant to R.C. 5503.04 and paid to the association.