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1. CHARTER—VILLAGE OF FAIRBORN—SECTIONS 6,, 35—APPLICABLE ONLY TO THOSE FEES AND COSTS TAXED AND COLLECTED BY MAYOR CONCERNING VIL-LAGE ORDINANCES.
2. PROVISIONS OF SECTIONS 6, 35, VILLAGE CHARTER, INAPPLICABLE TO FEES IN STATE CASES.
3. VILLAGE MAYOR AUTHORIZED BY LAW TO RETAIN FEES COLLECTED FOR SERVICES IN STATE CASES.
4. VILLAGE CHIEF OF POLICE AUTHORIZED TO RECEIVE AND HOLD FOR HIS OWN USE FEES AND COSTS TAXED AND COLLECTED FOR SERVICES IN STATE CASES.

SYLLABUS:

1. Sections 6 and 35 of the charter of the Village of Fairborn are applicable only to those fees and costs taxed and collected by the mayor concerning ordinances of the village.
2. The provisions of Sections 6 and 35 of the charter of the Village of Fairborn, in so far as same relate to the fees and costs taxed and collected by the mayor, are inapplicable to fees in state cases.
3. The mayor of the Village of Fairborn is authorized by law to retain the fees collected for his services in state cases.
4. The chief of police of Fairborn Village is authorized to receive and hold for his own use the fees and costs taxed and collected for his services in state cases.

Columbus, Ohio, April 22, 1950

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen :

This will acknowledge receipt of your request for my opinion, which reads as follows :

“A question has arisen in connection with the current examination of the village of Fairborn (formerly Osborn), requiring the interpretation of the provisions of the village charter with reference to the distribution to be made of the collections for fees and costs taxed by the Mayor in state cases.

“It will be noted that Fairborn is a charter village, having established a ‘Council-Manager’ form of government under the provisions of section 2 of the charter.

“Section 6 of the village charter provides that Council shall designate by majority vote one of its members to act as Mayor of the village. Said section 6 further provides in part as follows :

“ * * * He (the Mayor) shall receive such additional compensation to that received as Councilman as the Council shall by ordinance determine, upon the affirmative vote of three members thereof, exclusive of his own, and shall hold said office at its pleasure * * *.

“The fees taxed and collected by said Mayor shall be paid into the Village Treasury and credited to the fund out of which the salary of said Mayor shall be payable.

“Section 35 of the charter reads: ‘All fees received by any officer or employe shall belong to the Village Government and shall be paid daily to the Department of Finance.’

“The Mayor of Fairborn has taxed fees and costs for his services, and those of the Chief of Police, rendered in State cases, which fees and costs when collected were retained by the Mayor and the Chief of Police respectively.

“A similar question was raised in the year 1948 during the examination of a city operating under the Council-Manager form of government as provided in Section 3515-1, General Code, Article IV, Section 1. In that case the then Attorney General ruled in Opinion No. 2932, dated March 22, 1948, that a ‘police justice’ is required by the provisions of Section 3515-1, Article IV, Section 19, General Code, to pay any fees arising from state cases into the municipal treasury.

"In view of the similarity of the provisions of Section 3515-1, Article VI, Section 19, General Code, and Sections 6 and 35 of the charter of Fairborn village, we respectfully request that you give consideration to the following questions and furnish us with your formal opinion in answer thereto:

"1. Do the provisions of Section 6 of the charter of the village of Fairborn require the Mayor to pay all fees and costs taxed by him and collected, including the fees in state cases, into the village treasury?

"2. Is it legal for the Mayor of Fairborn village to retain the fees collected for his services in State cases?

"3. Is it legal for the Chief of Police of Fairborn village to receive and hold for his own the fees and costs taxed and collected for his services in State cases?"

The opinion rendered by my immediate predecessor, Opinions of Attorney General No. 2932, dated March 22, 1948, was based on specific provisions of law, viz., Section 3515-1 et seq., General Code. Said sections were enacted by the legislature pursuant to Article XVIII, Section 2, of the Ohio constitution, which provides that:

"General laws shall be passed to provide for the incorporation and government of cities and villages; and additional laws may also be passed for the government of municipalities adopting the same; but no such additional law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law."

In the case of *Switzer et al. v. State ex rel. Silvey, et al.*, 103 O. S. 306, the court held in the third branch of the syllabus:

"The act of the General Assembly passed April 28, 1913 (103 O. L. 767) (§3515-1 et seq.), purporting to provide optional forms of municipal government, expressly pursuant to Section 2, Article XVIII of the Constitution, and providing for the adoption of any one of them by referendum vote, has no application to the municipalities of Ohio that have adopted a charter form of government under Sections 7 * * *, Article XVIII of the Constitution of Ohio."

(§3515-1 et seq. added.)

It must be noted that the charter of the Village of Fairborn was adopted by its citizens in accordance with Article XVIII, Section 7, of the Ohio Constitution, and reads as follows:

"Any municipality may frame and adopt or amend a charter

for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government."

I must therefore conclude that Opinion No. 2932 is not applicable to the instant question.

The limitation placed upon municipalities adopting a charter for its government is found in Article XVIII, Section 3, of the Ohio Constitution, which provides:

"Municipalities shall have authority to exercise all powers of local self government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

Section 2 of the charter of the Village of Osborn (now Fairborn), Ohio, provides in part as follows:

"The municipal government provided by this charter shall be known as the 'Council-Manager Government'. Pursuant to its provisions and subject only to the limitation imposed by the state constitution and by this Charter, all powers of the Village shall be vested in an elective Council hereinafter referred to as the 'council', which shall enact local legislation, adopt budgets, determine policies, and appoint the City Manager, who shall execute the laws and administer the government of the Village. * * *"
(Emphasis added.)

Section 6 of the Charter of the Village of Osborn (now Fairborn), Ohio, provides in part that:

"The Council shall designate by a majority vote, one of its number to act as *Mayor of the Village who shall exercise all the judicial functions of a Mayor under the general laws of the state*, and who shall use the title of 'Mayor' * * *, and which the general law of the State so requires, * * *.

"The fees taxed and collected by said Mayor shall be paid into the Village Treasury and credited to the fund out of which the salary of said Mayor shall be payable. * * *"

(Emphasis added.)

Section 35 of the Charter of the Village of Osborn (now Fairborn), Ohio, provides that:

"All fees received by any officer or employe shall belong to the Village Government and shall be paid daily to the Department of Finance."

In the case of *State, ex rel. Arey v. Sherrill*, 142 O. S. 574, the court said:

“The words ‘general laws,’ as used in the phrase ‘not in conflict with general laws’ in section 3, Article XVIII of the Constitution, refer to laws enacted by the General Assembly.”

What are the general laws in regard to fees collected by the mayor in state cases? Section 4270 of the General Code provides that:

“All fines and forfeitures in *ordinance cases* and all fees collected by the mayor, or which in any manner come into his hands, due such mayor or to a marshal, chief of police or other officer of the municipality and any other fees and expenses which have been advanced out of the municipal treasury, and all money received by such mayor for the use of the municipality, shall be by him paid into the treasury of the municipality on the first Monday of each month. At the first regular meeting of council in each and every month, he shall submit a full statement of all money received, from whom and for what purposes received and when paid into the treasury. *Except as otherwise provided by law, all fines and forfeitures collected by him in state cases together with all fees and expenses collected, which have been advanced out of the county treasury, shall be by him paid over to the county treasury on the first business day of each month.*”

(Emphasis added.)

Clearly there is a distinction made concerning the disposition of fees collected by the mayor in municipal cases and those collected by the mayor in state cases.

Section 4548, General Code, provides:

“The mayor shall be a conservator of the peace throughout the corporation, and within the limits thereof shall have the jurisdiction and powers of a justice of the peace in civil cases, and his proceedings therein may be reviewed in the same manner. He shall have the jurisdiction in criminal cases herein provided.”

Section 4550, General Code, provides:

“He shall keep a docket, and shall be entitled to receive the same fees allowed justices of the peace for similar services. He shall keep an office at a convenient place in the corporation, to be provided by the council, and shall be furnished by the council with the corporate seal of the corporation, in the center of which

shall be the words, 'Mayor of the city of.....,'
'Mayor of the village of.....,' as the case
may be."

In the case of *Cleveland v. Jewett*, 39 O. S. 271, the syllabus reads:

"Fines and costs received by the directors of the work-house at Cleveland, from persons convicted of misdemeanors, under the statutes, in prosecutions in the name of the state in the courts of Cuyahoga County, and committed to such work-house for non-payment of fines and costs, must, under Rev. Stats. §6802, be paid into the county treasury; and where such fines and costs have been paid into the city treasury, the city, on refusing to pay the same into the county treasury, is liable to an action therefor by the county commissioners."

Section 4534 of the General Code provides that:

"In felonies and other criminal proceedings not herein provided for, such mayor shall have jurisdiction and power throughout the county concurrent with justices of the peace. The chief of police shall by himself or a police officer of the municipality designated by him attend on the sittings of such court, to execute the orders and process thereof and to preserve order therein, and such chief of police or other police officer of the municipality shall execute and return all writs and process to them directed by the mayor, and their jurisdiction in the execution of such writs and process, in criminal cases, and in cases of violations of ordinances of the corporation, shall be co-extensive with the county, and in civil cases shall be coextensive with the jurisdiction of the mayor therein, and in serving such writs and process and taxing costs thereon, *shall be governed by the laws pertaining to constables. The fees of the mayor in all cases shall be the same as those allowed justices of the peace and in all cases there shall be taxed for services of such chief of police or other police officer, the same fees and expenses as those allowed constables.*" (Emphasis added.)

Section 3347 of the General Code provides in part as follows:

"For services actually rendered and expenses incurred, regularly elected and qualified constables shall be entitled to receive the following fees and expenses, to be taxed as costs and collected from the judgment debtor, except as otherwise provided by law: * * * attending criminal case during trial or hearing and including having charge of prisoner or prisoners, each case, two dollars and fifty cents, * * *."

In the case of *The City of Piqua v. Crone*, 2 N. P. (N. S.) 165, the syllabus reads as follows:

"The mayor of a city in Ohio is entitled to retain his fees and costs, collected in cases tried before him for violation of the criminal statutes of the state, * * * and a provision of a city ordinance which purports to require him to pay such fees and costs into the city treasury is invalid as being in conflict with the statutes of the state."

In view of the foregoing, you are advised that in my opinion:

1. Sections 6 and 35 of the charter of the Village of Fairborn are applicable only to those fees and costs taxed and collected by the mayor concerning ordinances of the village.
2. The provisions of Sections 6 and 35 of the charter of the Village of Fairborn, in so far as same relate to the fees and costs taxed and collected by the mayor, are inapplicable to fees in state cases.
3. The mayor of the Village of Fairborn is authorized by law to retain the fees collected for his services in state cases.
4. The chief of police of Fairborn Village is authorized to receive and hold for his own use the fees and costs taxed and collected for his services in state cases.

Respectfully,

HERBERT S. DUFFY,
Attorney General.