

University on the matter of awarding contracts; Recommendations of the State Architect; letter from the Auditor of State, showing that all necessary papers are on file in his office; tabulation of bids; and letter from the Secretary of State, certifying that a process agent has been appointed for the Marvin Electric Company in the State of Ohio.

Finding said contract in proper legal form, I have noted my approval thereon, and said contract, together with all papers submitted in this connection is returned herewith.

Yours very truly,

THOMAS J. HERBERT,
Attorney General.

490.

MUNICIPAL COURT—JUDGE—MANDATORY TO APPOINT CLERK OF SAID COURT TRUSTEE WHERE APPLICATION MADE FOR BENEFIT OF CREDITORS—TRUSTEESHIP ACCOUNTS—SECTION 11728-1, G. C.—STATUS WHERE PERSON NOT CLERK OF SAID COURT APPOINTED—COSTS—BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES—MAY EXAMINE AND AUDIT SUCH ACCOUNTS AND MAKE FINDINGS—JUSTICE OF PEACE—CITY OF WARREN.

SYLLABUS:

1. *Under the provisions of Section 11728-1, General Code, whenever an application for appointment of a trustee for the benefit of creditors is made to a judge of the municipal court, it is mandatory that the judge designate the clerk of said court to act as trustee.*

2. *In the event a municipal judge appoints as trustee a person other than the clerk of municipal court, such person may not deduct any sum of money from the trusteeship accounts as compensation for services rendered.*

3. *The Bureau of Inspection and Supervision of Public Offices may examine and audit these trusteeship accounts and render findings for illegal fees or compensation deducted and retained by such appointees.*

4. *The two dollars collected by the municipal court of Warren, upon the filing of an application for the appointment of a trustee for the benefit of creditors, must be considered as part of the two percent permitted to be charged as costs in such cases and may not be collected in addition thereto.*

COLUMBUS, OHIO, April 27, 1939.

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:

"We are inclosing herewith a letter received from our Examiner in the City of Warren, Ohio, in which it is indicated that Municipal Court Trusteeship Accounts are being handled in an odd or peculiar manner by the Municipal Court in that City. The letter shows that such Trusteeship Accounts are 'farmed out' and are not handled in the manner specified by the provisions of Section 11728-1, G. C.

Will you kindly examine this correspondence and advise us in answer to the following questions:

Question 1. Is a Municipal Court authorized to appoint or designate any one other than the Clerk of such Court, as Trustee under the provisions of section 11728-1, G. C.?

Question 2. If some one other than the Clerk has been appointed Trustee by the Municipal Court, is that person authorized to deduct 2%, or any other sum of money, from the Trusteeship Account as compensation for himself?

Question 3. Are the Examiners for this Bureau authorized to examine and audit these 'farmed out' Trusteeship Accounts and render findings for any illegal fees or compensation deducted and retained by said Trustees?

Question 4. In case the Municipal Court designates the Clerk as Trustee in the manner provided by section 11728-1 G. C., is the court authorized to tax the \$2.00 filing fee in addition to 2% of the account as costs for the City?"

The answer to your first question is contained in section 11728-1, General Code. That section provides, among other things, that those persons who qualify may apply to any justice of the peace or judge of a municipal court within this state, in whose jurisdiction he resides, for the appointment of a trustee for the benefit of creditors, to receive that portion of the personal earnings of the debtor not exempt from execution, attachment or proceeding in aid of execution. Pertinent to question one, said section further provides as follows:

"If application for a trustee be made to a judge in a municipal court such judge shall designate the clerk of such municipal court to act as trustee and said clerk shall serve without additional compensation and his official bond shall be construed as conditioned upon the fulfillment of the trust, and no additional bond shall be required."

This provision affords no discretion to a municipal judge when appointing a trustee. The statute is clear and unambiguous and makes it mandatory for a municipal judge to designate the clerk of the municipal court to act as trustee.

Turning now to question two, you state in your letter that trusteeship accounts in the municipal court of Warren have been "farmed out" to persons other than the clerk of said court. You therefore seek my opinion whether such persons acting as trustee are authorized to deduct any sums in the trusteeship accounts as compensation for their services. In view of my answer to your first question and the fact that no statutory authority exists for the appointment of such trustees, I am clearly of the opinion that such appointees may not deduct any sum of money from the trusteeship accounts as compensation for services so rendered.

Question three of your letter is concerned with the authority of the Bureau of Inspection and Supervision of Public Offices to examine and audit the trusteeship accounts which have been "farmed out" and to render findings for illegal fees or compensation deducted and retained by the trustees. A proper answer to this question requires a preliminary examination of the powers and duties of the Bureau. In general, such powers and duties are contained in section 274, General Code, which provides in part as follows:

"There shall be a bureau of inspection and supervision of public offices in the department of auditor of state which shall have power as hereinafter provided in sections two hundred seventy-five to two hundred eighty-nine, inclusive, to inspect and supervise the accounts and reports of all state offices, including every state educational, benevolent, penal and reformatory institution, public institution and the offices of each taxing district or public institution in the state of Ohio."

By virtue of that section and sections immediately following, the Bureau may examine the accounts of all public offices within the state to determine whether or no public money is being handled in accordance with statutory provisions. In connection therewith, I direct your attention to that paragraph in section 286, General Code, which defines public money as follows:

"The term 'public money' as used herein shall include all money received or collected under color of office, whether in accordance with or under authority of any law, ordinance or order, or otherwise, and all public officials, shall be liable therefor. All money received according to law, shall be due to the political subdivision or taxing district with which the officer is connected and shall be by him paid into the treasury thereof to the credit of a trust fund, there to be retained until claimed by the lawful owner; if not claimed within a period of five years after having been so credited to said special trust fund, such money shall revert to the general fund of the political subdivision where collected."

In the instant case we are concerned with the accounts of trustees, other than clerks of municipal courts, who have been appointed by a judge of a municipal court. Obviously, whatever moneys which are obtained by such appointees in that capacity are received and collected under color of office. Clearly, under the provisions of section 274, supra, accounts of a municipal court are subject to inspection and supervision by the Bureau. It follows, therefore, that the accounts of the trustees in question, which accounts contain public money as defined in section 286, supra, are within the jurisdiction of the Bureau.

An examination and interpretation of sections 11728-1 and 1579-1473, General Code, afford an answer to question 4 of your communication. Section 1579-1473, General Code, sets forth the method of taxing costs in the municipal court of Warren as follows:

“Except as otherwise provided for in this act, in all civil actions and proceedings wherein the courts of justices of the peace now have or hereafter may be given jurisdiction, the fees and costs shall be the same and taxed in the same manner as now is or hereafter may be provided for actions and proceedings heard and determined in a court of a justice of the peace. In other actions and proceedings, the fees and costs shall be the same and taxed in the same manner as is now or may hereafter be provided for actions and proceedings heard and determined in the court of common pleas. In criminal proceedings, all fees and costs shall be the same as fixed with respect to police courts.

“Provided, however, that in lieu of the aforesaid schedule of fees and costs, the municipal court may establish by rule of court a schedule of fees and costs to be taxed in all actions and proceedings, in no case to exceed the amount of fees and costs for like actions and proceedings under the schedule referred to in the first paragraph of this section.

The sum of two (\$2.00) dollars of said costs shall be payable in advance by the party instituting any civil proceedings unless such party shall be allowed by leave of court to proceed without making such deposit, upon good cause shown. All deposits and advance payments of fees and costs, including those for jurors and summoning jurors, shall be refunded when the same shall have been paid by the losing party or as otherwise provided by law.”

In any civil action of which, a court of the justice of the peace has jurisdiction, the taxes and costs of such actions, if tried before the Warren Municipal Court, are the same as those charged by the justice of the peace court. Section 11728-1, supra, gives jurisdiction in trusteeship cases to both justices of the peace and municipal courts. It would follow that the

costs in trusteeship cases heard by the municipal court of Warren are identical to the costs which may be taxed by a justice of the peace. The amount of such costs is provided in section 11728-1, as follows:

“If application for a trustee be made to a justice of the peace, such justice may receive as full compensation for his services as justice of the peace therein, two per cent of the total amount of the debtor’s payment on claims as herein provided and may appoint any suitable person to act as trustee.”

This provision limits the justice of the peace fee to two percent of the total amount of the debtor’s payment on claims and, as explained above, the municipal court of Warren is likewise so limited. Section 1579-1473, supra, authorizes the municipal court of Warren to collect in advance “two (\$2.00) dollars of said costs.” In view of the fact that “said costs” may not exceed two per cent of the total amount of the debtor’s payment on claims, I am of the opinion that the two dollars collected in advance must be considered as part of the two percent and may not be collected in addition thereto.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

491.

CONTRACT — STATE WITH THE SMITH AND OBY COMPANY, HEATING AND MECHANICAL EQUIPMENT, HEATING PLANT ADDITION, KENT STATE UNIVERSITY, KENT, OHIO.

COLUMBUS, OHIO, April 27, 1939.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval, the contract between the State of Ohio, acting by you as Director of the Department of Public Works for the Board of Trustees of Kent State University, Kent, Ohio, and the The Smith and Oby Company, an Ohio Corporation, for the construction and completion of Contract for Heating and Mechanical Equipment for a project known as P. W. A. Docket No. OH-1720-F, Senate Bill No. 457, Heating Plant Addition Kent State University, Kent, Ohio—1938 as set forth in Item No. 19, Heating and Mechanical Equipment for the Heating Plant Addition as specified and shown on the drawings for Base Bid No. 3 (including the Butler Stokers) and as per telegram of the Form of Proposal dated December 14, 1938, all according to