

1446.

STATE CASES—WHEN CITY SOLICITOR HAS DUTY OF PROSECUTING.

SYLLABUS:

It is the duty of the city solicitor to prosecute state cases in a mayor's court and the council may by ordinance or resolution require him to prosecute these cases in higher courts.

It is the duty of the prosecuting attorney to prosecute state cases on error from the mayor's court in the common pleas and higher courts.

COLUMBUS, OHIO, May 9, 1924.

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

Gentlemen:—

I am in receipt of your recent communication as follows:

"We are in receipt of a letter from H. C. K., Mayor of _____, Ohio, as follows:

"We have been having some dispute with our city solicitor as to who should prosecute state cases in my court. He has held he is not required to prosecute state cases in this court and especially if they go to higher court. Will you please advise whether the city solicitor or prosecuting attorney should take care of these cases when they are taken to higher court?"

"Since the above matter is of general interest to this bureau, we would very much appreciate your opinion on this subject."

Section 4306, General Code of Ohio, provides:

"The solicitor shall also be prosecuting attorney of the police or mayor's court. When council allows an assistant or assistants to the solicitor, he may designate an assistant or assistants to act as prosecuting attorney or attorneys of the police or mayor's court. The person thus designated shall be subject to the approval of the city council."

Section 4307, General Code, provides:

"The prosecuting attorney of the police or mayor's court shall prosecute all cases brought before such court, and perform the same duties, as far as they are applicable thereto, as required of the prosecuting attorney of the county. The city solicitor or the assistant or assistants whom he may designate to act as prosecuting attorney or attorneys of the police or mayor's court shall receive for this service such compensation as council may prescribe, and such additional compensation as the county commissioners shall allow."

Section 4308, General Code of Ohio, provides:

"When required to do so by resolution of the council, the solicitor shall prosecute or defend, as the case may be, for and in behalf of the corpora-

tion, all complaints, suits and controversies in which the corporation is a party, and such other suits, matters and controversies as he shall, by resolution or ordinance, be directed to prosecute, but shall not be required to prosecute any action before the mayor for the violation of an ordinance without first advising such action."

It will be noted that section 4307 provides "the prosecuting attorney of the police or mayor's court shall prosecute all cases brought before such court".

Sections 4527 and 4528, General Code, provide as follows:

"Section 4527: In cities not having a police court, the mayor shall have final jurisdiction to hear and determine any prosecution for the violation of an ordinance of the corporation, unless imprisonment is prescribed as part of the punishment, and in keeping his dockets and files, he shall be governed by the laws pertaining to justices of the peace."

"Section 4528: He shall have jurisdiction to hear and determine any prosecution for a misdemeanor, unless the accused is, by the constitution, entitled to a trial by jury, and his jurisdiction in such cases shall be co-extensive with the county, and in keeping his dockets and files, making report to the county auditor, disposing of unclaimed moneys and in purchasing his criminal dockets and blanks for state cases, shall be governed by the laws pertaining to justices of the peace."

By these sections it will be noted that a mayor has jurisdiction in state cases and for violation of ordinances. "All cases brought before such court" would, therefore, include state cases, and it is made the duty of the city solicitor, by section 4307, to prosecute such cases in the mayor's court. For prosecuting state cases the county commissioners, under section 4307, General Code, shall allow the city solicitor such additional compensation as they see fit.

As to the duty of the city solicitor to prosecute state cases in higher courts, it is necessary to consider section 2916, General Code, with sections 4307 and 4308.

Section 4307, as far as pertinent, provides:

"The prosecuting attorney of the police or mayor's court shall prosecute all cases brought before such court, and perform the same duties, as far as they are applicable thereto, as required of the prosecuting attorney of the county."

By this section the duties of the city solicitor in *all cases* are the same as the prosecuting attorney, in so far as they are applicable thereto. It is believed that the words "applicable thereto" modify "such court" and therefore his duties apply only to ordinance cases and to such cases before a mayor's court.

Section 4308, *supra*, says that the city solicitor shall prosecute or defend such other suits, matters and controversies as he shall, by ordinance or resolution, be directed to prosecute.

Section 2916, General Code, as far as pertinent, provides:

"The prosecuting attorney shall have power to inquire into the commission of crimes within the county and except when otherwise provided by law shall prosecute on behalf of the state all complaints, suits and controversies in which the state is a party, and such other suits, matters and controversies as he is directed by law to prosecute within or without the county, in the probate court, common pleas court and court of appeals."

It will be noted that this section says "he shall prosecute on behalf of the state all complaints, suits and controversies in which the state is a party" in the probate court, common pleas court and court of appeals. No duty is placed upon the prosecuting attorney to prosecute suits before a mayor.

A careful consideration of all statutes in *pari materia* leads to the following conclusion:

It is the duty of the city solicitor to prosecute state cases in a mayor's court and the council may, by ordinance or resolution, require him to prosecute these cases in higher court.

It is the duty of the prosecuting attorney to prosecute state cases on error from the mayor's court in the common pleas and higher court.

Respectfully,

C. C. CRABBE,
Attorney General.

1447.

TAXATION—"X" HOSPITAL NOT EXEMPT FROM TAXATION—SPECIFIC CASE PASSED UPON.

SYLLABUS:

The "X Company" Hospital as described herein is not "an institution used exclusively for charitable purposes," and is therefore not exempt from taxation, under amended section 5353, General Code.

In passing on cases similar to the said "X Company" Hospital, the Tax Commission should not consider, as a deciding factor, the ratio that may exist as between pay patients and those admitted who are unable to pay.

COLUMBUS, OHIO, May 9, 1924.

The Tax Commission of Ohio, Columbus, Ohio.

Gentlemen:—

Acknowledgment is hereby made of your recent communication, which reads as follows:

"The X Company is organized as a corporation not for profit and has been operating a hospital ever since the 10th day of December, 1920. As stated in its charter its purpose is as follows:

'Said corporation is formed for the purpose of establishing, maintaining and conducting a hospital for medical and surgical treatment of persons; conducting a training school for nurses, and granting of diplomas to nurses graduating therefrom, engaging in research work in medicine, surgery and kindred subjects, receiving funds by donation, bequest or otherwise; holding, investing and disbursing the same, charging and receiving compensation for treatment, services and accommodations, all for the purpose of maintaining said hospital and not for profit; and the doing of all things necessary and incident thereto.'

There are twelve stockholders, all but one of whom are physicians