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POLICE CONSTABLE—APPOINTED UNDER PROVISIONS OF SECTION 1901.32, PARAGRAPH D, RC—NO AUTHORITY FOR ALLOWANCE OF FEES—SERVICES PERFORMED IN CASES PROSECUTED IN MUNICIPAL COURT—DEPUTY BAILIFF—NO AUTHORITY FOR REIMBURSEMENT—USE OF FUNDS COLLECTED AS FEES AND COSTS—MUNICIPAL COURT CASES—TOWNSHIP AUTHORITIES—SERVICES OF POLICE CONSTABLE AS DEPUTY IN MUNICIPAL COURT.

SYLLABUS:

There is no authority in law for the allowance of fees to a police constable appointed under the provisions of paragraph (D) of Section 1901.32, Revised Code, for services performed by him in cases prosecuted in the municipal court in which he acts as deputy bailiff; nor is there any authority for the reimbursement, through the use of funds collected as fees and costs in municipal court cases, of township authorities for the services of a police constable as such deputy bailiff in a municipal court.

Columbus, Ohio, January 21, 1955

Hon. W. H. Anderson, Prosecuting Attorney
Trumbull County, Warren, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Trustees of Weathersfield Township, of this County, which Township is entirely within the territory of the Municipal Court of Niles, desire to appoint a police constable and to have

fees allowed to him repaid to their general fund as partial reimbursement for compensation paid the police constable.

“R.C. 509.16 provides that the trustees may designate any qualified person as police constable and makes provision that all fees the constable would be entitled to as such police constable be paid into the general fund of the township.

“Paragraph (D) of R.C. 1901.32 provides for the appointment of a police constable by the trustees of a township when the township is entirely within the territory of a municipal court. This section makes no provision for the reimbursement to the general fund of the township.

“We have read with considerable interest your Opinion No. 1769 to the effect that police constables are not entitled in any event to fees provided for by G.C. Section 3347, now R.C. 509.15.

“Our questions are these :

“(1) May a police constable, appointed pursuant to Paragraph (D) of R.C. 1901.32, be entitled to the allowance of any fees connected with arrests made by him in the township of his appointment, said township being entirely within the territory of a municipal court and the prosecution of such criminal cases being brought in said court.

“(2) Are the township trustees of said appointing township entitled to reimbursement from the municipal court of fees which would legally be credited to a police constable participating in making arrests in the township of his appointment, the prosecution of which is made in the municipal court.”

Paragraph (D) of Section 1901.32, Revised Code, referred to in your inquiry, reads as follows :

“(D) Every police officer of any municipal corporation or police constable of a township within the territory is ex officio a deputy bailiff of the court in and for the municipal corporation or township within which he is commissioned as such police officer or police constable, and shall perform such duties in respect to cases within his jurisdiction as are required of him by a judge of said court or by the clerk, or bailiff or deputy bailiffs thereof, without additional compensation. In any township which is entirely within the territory of the court, the board of township trustees may appoint police constables, who shall receive such compensation out of the general funds of the township as the board by resolution prescribes for the time actually spent in keeping the peace, protecting property, and performing their duties as police constables, and as ex officio deputy bailiffs of the court within the township.”

The reference in the second sentence in this paragraph to "any township which is entirely within the territory of the court" might appear at first impression to suggest that the preceding sentence refers to townships other than those "entirely" within a court's territory, and that the prohibition therein of "additional compensation" to police constables would not apply in townships which are "entirely" within such territory. I am unable to accept this suggestion, however, since the word "within," as here employed in the first sentence of this paragraph, cannot reasonably be given any meaning at variance with the term "entirely within." In short, it seems to me that a township may be either (1) entirely without a particular territory, (2) it may be partly within and partly without, or (3) it may be within it; and that the latter category is synonymous with being "entirely within."

In this view of the matter it is clear that a police constable appointed and serving in a township which is entirely within the territory of a municipal court would be without authority to claim any additional compensation by way of fees even though he would be obliged under other statutory provisions to pay such fees over to the township treasury. As to the right of a township to claim reimbursement direct from the court for the services of a police constable who is paid from township funds, I perceive nothing in the Municipal Court Act which even remotely suggests such authority.

In Section 1901.26, Revised Code, provision is found for the taxing of costs in municipal courts. This section reads in part:

"Costs in a municipal court shall be fixed and taxed as follows:

"(A) The municipal court, by rule, may establish a schedule of fees and costs to be taxed in any action or proceeding, either civil or criminal, which shall not exceed the fees and costs provided by law for a similar action or proceeding in the court of common pleas."

Provision for the disposition of funds thus accruing is found in paragraph (F) of Section 1901.31, Revised Code, which reads as follows:

"The clerk of a municipal court shall receive and collect all costs, fees, fines, penalties, bail, and other moneys payable to the office or to any officer of the court and issue receipts therefor, and shall each month disburse the same to the proper persons or officers and take receipts therefor, provided that fines received for violation of municipal ordinances shall be paid into the treasury of the municipal corporation whose ordinance was violated

and to the county treasury all fines collected for the violation of state laws, subject to sections 3375.50 and 3375.53 of the Revised Code. Moneys deposited as security for costs shall be retained pending the litigation. He shall keep a separate account of all receipts and disbursements in civil and criminal cases, which shall be a permanent public record of the office, as required by the bureau of inspection and supervision of public offices, and on the expiration of his term such records shall be delivered to his successor. He shall have other powers and duties as are prescribed by rule or order of the court."

The reference to payment to the "proper persons or officers" lends no aid in the solution of the question at hand since it is obviously necessary to refer to other statutes to discover who the "proper" person or officer is in a particular case, and as I have indicated above I find no statutory provision which suggests that the township authorities are to be paid any funds from this source.

In your inquiry you mention the provision in Section 509.16, Revised Code, relative to the payment of certain fees into the treasury of the township. This section reads as follows:

"The board of township trustees may designate any qualified person as a police constable. The board may pay each police constable, from the general funds of the township, such compensation as the board by resolution prescribes for the time actually spent in keeping the peace, protecting property, and performing duties as a police constable. Such police constable shall not be paid fees in addition to the compensation allowed by the board for services rendered as a police constable. All constable fees provided for by section 509.15 of the Revised Code, where due for services rendered while the constable performing such services is being compensated as a police constable for his performance, shall be paid into the general fund of the township."

This enactment long antedates the provision noted above in paragraph (D) of Section 1901.32, Revised Code, and the latter is a separate and distinct provision for the appointment of police constables. It is difficult to discover any valid reason for the latter authorization for I perceive nothing in the municipal court act which would prevent the exercise of the appointing power set out in Section 509.16, supra, in a township which is entirely within the territory of a municipal court, and the utilization of the services in a municipal court of the constables so appointed.

Assuming, therefore, that a police constable might be appointed under the provisions of Section 509.16, Revised Code, and thereafter act as bailiff

as provided in Section 1901.32, *supra*, it is to be noted that the former section authorizes payment into the township treasury only of "constable fees provided for by Section 509.15 of the Revised Code, *where due* for services rendered * * *." (Emphasis added.) Section 509.15, Revised Code, only authorizes fees where services have been performed by "regularly *elected* and qualified constables." Accordingly, if the individual concerned were not a "regularly elected" constable who has also been appointed a police constable, this section would not authorize the payment into the county treasury of any fees in connection with services he renders in a municipal court.

However, this point may, in my opinion, be regarded as academic for the reason that Section 509.16, Revised Code, is operative only in cases where the next preceding section applies, and I do not regard it, Section 509.15, Revised Code, as applicable in municipal court proceedings. The provisions of this section are clearly general in nature whereas the provision noted above in Section 1906.26, for the establishment of a schedule of fees and costs by rule is a special enactment which under commonly accepted rules of statutory construction would prevail as to points of conflict with an earlier general statute. Any fees, therefore, which are collected under such a schedule would be distributed as provided in the municipal court act rather than as provided in general statutory provisions which might otherwise apply; and as already noted, such act makes no provision for the payment into the township treasury of any funds for the services of police constables in connection with municipal court operations.

Accordingly, in specific answer to your inquiry, it is my opinion that there is no authority in law for the allowance of fees to a police constable appointed under the provisions of paragraph (D) of Section 1901.32, Revised Code, for services performed by him in cases prosecuted in the municipal court in which he acts as deputy bailiff; nor is there any authority for the reimbursement, through the use of funds collected as fees and costs in municipal court cases, of township authorities for the services of a police constable as such deputy bailiff in a municipal court.

Respectfully,

C. WILLIAM O'NEILL

Attorney General