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LAW LIBRARIES—FUNDS—PAYMENT TO FUND BY MUNICIPAL COURT CLERKS—AMOUNTS—ENFORCEMENT—§3375.50—RC; PAR 2 SYLLABUS OF OPINION NO. 1635 OAG 1952, APPROVED AND FOLLOWED.

SYLLABUS:

1. The last two sentences of division (D) of Section 3375.50, Revised Code, relating to the determination by the county auditor of the maximum amount to be paid by each municipal court clerk to the county law library association, apply to divisions (A), (B), (C), and (D) of said section, and the maximum amount to be paid by each municipal court clerk under said section shall be determined by the county auditor regardless of the population of the particular county concerned.

2. Where the maximum amount to be paid by a clerk of a municipal court has been determined by the county auditor pursuant to Section 3375.50, Revised Code, such payment is to be made only from funds collected by said clerk from the sources designated in the first paragraph of said section; and such payment may be enforced only to the extent that such funds have been collected by the clerk. (Paragraph 2 of the syllabus of Opinion No. 1635, Opinions of the Attorney General for 1952, approved and followed.)

3. The formula contained in the second last sentence of Section 3375.50, Revised Code, provides the only method by which a county auditor shall determine the maximum amount to be paid by a clerk of a municipal court to a county law library association under said section.

Columbus, Ohio, January 22, 1960

Hon. Edward R. Ostrander, Prosecuting Attorney
Lake County, Painesville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“This office has been consulted by the Auditor of Lake County and by the Municipal Court of Willoughby concerning the amendment to Section 3375.50 of the Revised Code insofar as it pertains to fines collected by the Municipal Court to be paid to the County Law Library Association. Lake County does have a qualified Law Library Association under this Section.

“Section 3375.50 limits the maximum to be paid by such Municipal Courts on the basis of population following sub-section ‘d’ and without starting a new paragraph, there is a requirement on the County Auditor to certify maximum amounts. We are unable to determine from the wordage whether it is the intent to

modify Sections 'A' through 'D', or Section 'D' only. Our County has no County Court and two Municipal Courts with jurisdiction jointly covering the entire County. In the case of the Willoughby Municipal Court, it covers four cities and five villages as well as some unincorporated area. The question is then raised that in the event there should be an inadequate amount to pay that assessed by the Auditor, presuming the Auditor is required to make an assessment where the population does not exceed 150,000 from what source would the balance of the assessment be collected, i.e., would it be collectable entirely from the City of Willoughby or would it be prorated among all of the participating political subdivisions covered by the Courts jurisdiction?

"The new amendment to this Section would appear to relieve the Mayor's Court from any obligation to pay fines, and it would therefore appear that these other cities and villages could escape any obligation if they were to be assessed by bringing all of their actions in the Mayor's Courts. If this should prove to be the intent of the legislation, should the Auditor consider this in arriving at his assessment?

"We are also concerned with the fact that the Auditor in arriving at the assessment is to consider the amount paid by the County Commissioners towards the salaries of the judge, clerk and prosecuting attorney. However, the County Commissioners also contribute towards the support of the bailiff and we are unable to advise the Auditor whether he should include this figure in arriving at the assessment to be certified by him."

In short, your questions are:

1. Do the last two sentences of division (D) of Section 3375.50, Revised Code, apply to divisions (A), (B), (C), and (D) of said section or only to division (D)?
2. Where the auditor sets a maximum amount to be paid by a clerk and there is an inadequate amount to pay such maximum, from what source should the balance be collected?
3. Should the auditor include the amount contributed by the board of county commissioners to the bailiff in arriving at the maximum to be set for the particular court?

Section 3375.50, Revised Code, referred to in your letter, reads in part:

"All moneys collected by a municipal corporation accruing from fines and penalties (etc) * * * except a portion of such moneys * * * shall be retained by the clerk of such municipal court, and be paid by him forthwith, each month, to the board of trustees of the law library association * * *."

“The total amount paid under this section in any one calendar year by the clerks of all municipal courts in any one county to the board of trustees of such law library association shall in no event exceed the following amounts:

“(A) In counties having a population of fifty thousand or less, based on the last federal census, seventy-five hundred dollars and the maximum amount paid by any of such courts shall not exceed four thousand dollars in any calendar year.

“(B) In counties having a population in excess of fifty thousand but not in excess of one hundred thousand, according to the last federal census, eight thousand dollars and the maximum amount paid by any of such courts shall not exceed five thousand five hundred dollars in any calendar year.

“(C) In counties having a population in excess of one hundred thousand but not in excess of one hundred fifty thousand, according to the last federal census, ten thousand dollars and the maximum amount paid by any of such courts shall not exceed seven thousand dollars in any calendar year.

“(D) In counties having a population of in excess of one hundred fifty thousand, according to the last federal census, fifteen thousand dollars in any calendar year. The maximum amount to be paid by each such clerk shall be determined by the county auditor in December of the year 1959 and in December of each succeeding year for the next succeeding calendar year, and shall bear the same ratio to the total amount payable under this section from the clerks of all municipal courts in such county as the total fines, costs, and forfeitures received by the corresponding municipal court, bear to the total fines, costs, and forfeitures, received by all the municipal courts in the county, as shown for the last complete year of actual receipts, on the latest available budgets of such municipal courts; and payments in the full amounts provided in this section shall be made monthly by each clerk in each calendar year until the maximum amount for such year has been paid. When such amount, so determined by the auditor, has been paid to the board of trustees of such law library association, then no further payments shall be required in that calendar year from the clerk of such court.”

Section 3375.50, *supra*, was amended by Amended Senate Bill No. 47 of the 103rd General Assembly, effective November 9, 1959. The amendment eliminated mayors' courts and police courts from the provision requiring payment of a portion of the money collected from fines, etc., to county law libraries and changed the total maximum amount of money payable by municipal courts in any one year from \$7500 with a \$3000 limitation on the amount any one court may pay in one year to the amounts that are set forth in the section above.

Regarding the first question, division (D) of Section 3375.50, *supra*, commences as follows :

“(D) In counties having a population of one hundred fifty thousand, according to the last federal census, fifteen thousand dollars in any calendar year. The maximum amount to be paid by *each such clerk* shall be determined by the county auditor * * *.”
(Emphasis added)

From this language, it would appear that the words “each such clerk” can only pertain to an earlier reference to “clerk” or “clerks” since the use of the word “such” implies such reference. There being no earlier reference in division (D) I am of the opinion that the words “each such clerk” refer to “clerks” as used in the second paragraph of Section 3375.50, Revised Code, reading :

“The total amount paid under this section in any one calendar year by *the clerks* of all municipal courts in any one county to the board of trustees of such law library association shall in no event exceed the following amount.” (Emphasis added)

It follows, therefore, that the last two sentences of division (D), *supra*, apply to divisions (A), (B), (C), and (D) of Section 3375.50, *supra*. Thus, under said section the maximum amount to be paid by each court is to be determined by the county auditor, regardless of the population of the county.

I might note in passing that this interpretation follows the procedure used under Section 3375.50, Revised Code, as existing prior to November 9, 1959, whereby the auditor determined the maximum amount to be paid by each court. I am further of the opinion that the Legislature intended to retain this procedure even though the auditor provisions were inserted in division (D) instead of being set forth clearly in a separate paragraph. As noted above, the use of the words “each such clerk” clearly shows such intention.

In your second question you speak of “an inadequate amount to pay that assessed by the Auditor” and “from what source would the balance of the assessment be collected.” On reviewing Section 3375.50, *supra*, I find no provision for assessment by the auditor and no requirement that a court pay a certain specified amount of money. The amounts determined by the auditor are “maximum” amounts which means only that each court shall not pay *more* than the amount determined by the auditor. Section

3375.50, *supra*, requires that certain moneys *collected* be paid to the law library association, thus, only that collected could be paid. The same general question was considered by one of my predecessors in Opinion No. 1635, Opinions of the Attorney General for 1952, page 515, paragraph 2 of the syllabus reading :

“Where a determination has been made by a county auditor, under the provisions of the second paragraph of Section 3056, General Code, of the maximum amount to be paid by the clerk of a municipal, police, or mayor’s court to the trustees of a law library association, such payment is to be made only from funds collected by such clerk from the sources designated in the first paragraph of Section 3056, General Code; and such payment may be enforced only to the extent that such funds have been so collected by such clerk.” (Section 3056, General Code, is now Section 3375.50, Revised Code.)

I am in accord with the conclusion of my predecessor in Opinion No. 1635, *supra*, and I am further of the opinion that the same reasoning may be applied in the instant matter. Answering the second question, therefore, I am of the opinion that where the maximum amount has been determined by the auditor under Section 3375.50, *supra*, such payment is to be made only from funds collected by the clerk of the municipal court from the sources designated in the first paragraph of said section; and such payment may be enforced only to the extent that such funds have been collected by such clerk.

The third question is concerned with what factors should be considered by the county auditor in setting maximum amounts to be paid by courts under Section 3375.50, *supra*. The provision for setting maximum amounts are found in the last two sentences of said section as set forth earlier, and it appears to be clear that the auditor is to follow a definite formula in determining such amounts. In this regard Section 3375.50 *supra*, reads in part :

“* * * The maximum amount * * * shall bear the same ratio to the total amount payable under this section from the clerks of all municipal courts in such county as the total fines, costs and forfeitures received by the corresponding municipal court, bear to the total fines, costs, and forfeitures received by all the municipal courts in the county, as shown for the last complete year of actual receipts, on the latest available budgets of such municipal courts; * * *.”

The above formula does not contain any provision for the auditor to consider the salary of a bailiff in determining the maximum amount to be

paid by a court, nor is there any provision for consideration of the salaries of the judge, clerk and prosecuting attorney in the making of such determination. It follows, therefore, that the auditor should not consider these salaries in determining maximum amounts under the section.

Accordingly, it is my opinion and you are advised:

1. The last two sentences of division (D) of Section 3375.50, Revised Code, relating to the determination by the county auditor of the maximum amount to be paid by each municipal court clerk to the county law library association, apply to divisions (A), (B), (C), and (D) of said section, and the maximum amount to be paid by each municipal court clerk under said section shall be determined by the county auditor regardless of the population of the particular county concerned.

2. Where the maximum amount to be paid by a clerk of a municipal court has been determined by the county auditor pursuant to Section 3375.50, Revised Code, such payment is to be made only from funds collected by said clerk from the sources designated in the first paragraph of said section; and such payment may be enforced only to the extent that such funds have been collected by the clerk. (Paragraph 2 of the syllabus of Opinion No. 1635, Opinion of the Attorney General for 1952, approved and followed.)

3. The formula contained in the second last sentence of Section 3375.50, Revised Code, provides the only method by which a county auditor shall determine the maximum amount to be paid by a clerk of a municipal court to a county law library association under said section.

Respectfully,

MARK McELROY

Attorney General