

4299.

CHIEF OF POLICE—NOT ENTITLED TO EXPENSES UNDER PROVISIONS OF SECTION 3017, G. C.

SYLLABUS:

A chief of police in the execution of writs in criminal cases involving the violation of state statutes is not a wholly salaried minor court officer and therefore not entitled to his expenses under the provisions of Section 3017, General Code.

COLUMBUS, OHIO, May 29, 1935.

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:

“Section 3017, General Code, provides that in State cases any wholly salaried minor court officer charged with the execution of a warrant of arrest or order of commitment shall receive from the county treasurer actual and necessary expenses of executing such writs upon specific itemized bill, verified by his oath, and certified to by the proper magistrate, court or clerk thereof.

In an opinion of the Attorney General at page 16 of his 1925 Reports, it was held that a chief of police could retain his fees in state cases for his personal use.

In view of this opinion, is a chief of police a wholly salaried minor court officer who will be entitled to his expenses in executing writs as provided for in Section 3017, General Code, in state cases where costs are not collected from the defendant.”

Section 3017, General Code, reads as follows:

“In all state cases any wholly salaried minor court officer charged with the execution of a warrant to arrest or order of commitment shall receive from the county treasurer the actual necessary expense of executing such writs upon specifically itemized bills, verified by his oath, and certified to by the proper magistrate, court or clerk thereof, and in like manner such expense shall be paid from the municipal treasury when incurred in ordinance cases.”

The opinion of the Attorney General referred to in your letter is to be found in Opinions of the Attorney General for 1925, page 16. The syllabus of that opinion reads as follows:

“Section 4270, General Code, does not apply to fees earned by a mayor, marshal or chief of police in state cases, but such fees should be paid to such officers for their personal use.”

The above opinion was based upon a decision of the Supreme Court of this State in the case of *State ex rel. Nead vs. Nolte*, 111 O. S. 486. The third branch of the syllabus of that case reads as follows:

"3. Section 4270, General Code, as amended (108 O. L., part 2, p. 1208), imposes no duty upon the mayor of a municipality to pay into the city treasury the fees taxed in favor of such mayor in the hearing of state cases."

From the opinion by Marshall, C. J., I quote the following, which appears at page 497:

"The true interpretation of Section 4270, General Code, is therefore, that in all state cases the mayor of a city or village is entitled to hold the legal fees taxed in his favor; the same not having been included within the language of the latter part of the section, which makes provision for payment of certain moneys into the county treasury. As to all ordinance cases, the fees taxed in favor of a mayor or marshal must be paid into the village or city treasury. By virtue of the proviso, a village council may by ordinance authorize the mayor or marshal to retain his legal fees."

In an opinion to be found in Opinions of the Attorney General for 1925, page 153, it was held as disclosed by the first branch of the syllabus:

"1. A chief of police of a city, who is entitled to fees in state cases but not entitled to fees in ordinance cases, is to be paid his expenses in ordinance cases, for arrests and commitments, from the city treasury, under the provisions of section 3017, General Code."

The last mentioned opinion points out that by virtue of Sections 4213 and 4270, General Code, a chief of police is not permitted to retain his fees in *ordinance* cases. Consequently the then Attorney General had no trouble in reaching the conclusion that a chief of police would be a wholly salaried minor court officer so far as his fees under *ordinances* were concerned, and would therefore be entitled to his expenses from the city treasury as provided in Section 3017, General Code. However, this opinion is carefully guarded so as not to give the impression that a chief of police is a wholly salaried minor court officer in reference to *state* cases.

After the holding in the "Nolte" case *supra*, and the above mentioned 1925 opinions, Section 4270, General Code, was amended. (112 O. L. 141). However, this office in an opinion to be found in Opinions of the Attorney General for 1928, Vol. II, page 1088, specifically pointed out that the amendment of Section 4270, General Code, in nowise changed the rule as laid down in the "Nolte" case *supra*. To the same effect see Opinions of the Attorney General for 1928, Vol. IV, page 2450; Opinions of the Attorney General for 1930, Vol. I, page 57; Opinions of the Attorney General for 1930, Vol. I, page 134. The chief of police may therefore, still retain the fees he earns in state cases for his personal use.

Can a chief of police be said to be a wholly salaried minor court officer as that term is used in Section 3017, General Code, in reference to state cases wherein he may still retain his fees? The very phrase itself would seem to exclude the chief of police since he may, in addition to his salary, retain his fees in state cases. Certainly he is not entirely compensated by a salary. That this seems to be the test of what constitutes one a wholly salaried minor court officer is indicated by an opinion to be found in Opinions of the Attorney General for 1928, Vol. III, page 2246. The syllabus of that opinion reads as follows:

"1. In view of the provisions of section 1579-631, General Code, to the effect that the bailiff of the Municipal Court of Lorain shall receive, in addi-

tion to his compensation, his actual expenses incurred in serving process of the court from the city treasury, such section fixing the maximum thereof at \$40.00 per month, such bailiff is not entitled to receive from the county treasury, expenses incurred in serving process of such court in state cases.

2. Inasmuch as, under the provisions of section 1579-630, General Code, every police officer of the City of Lorain is ex-officio a deputy bailiff of the Municipal Court of Lorain, such police officers being wholly salaried minor court officers are, as provided by Section 3017, General Code, entitled to receive in state cases from the county treasury the actual necessary expenses incurred by them in executing warrants to arrest, orders of commitment or other process. In like manner such expenses incurred by such officers shall be paid from the municipal treasury, when incurred in ordinance cases."

In view of the above and without unduly extending this discussion, it is my opinion in specific answer to your question that a chief of police in the execution of writs in criminal cases involving the violation of state statutes is not a wholly salaried minor court officer and therefore not entitled to his expenses under the provisions of Section 3017, General Code.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

4300.

APPROVAL, BONDS OF MAD RIVER RURAL SCHOOL DISTRICT, MONTGOMERY COUNTY, OHIO, \$25,000.00.

COLUMBUS, OHIO, May 29, 1935.

Industrial Commission of Ohio, Columbus, Ohio.

4301.

APPROVAL, BONDS OF CITY OF TOLEDO, LUCAS COUNTY, OHIO, \$100,000.00.

COLUMBUS, OHIO, May 29, 1935.

Industrial Commission of Ohio, Columbus, Ohio.