

In view of this, it would be perhaps advisable to submit to the electors at the same time the other matters are submitted the question of the levying of a tax in excess of the fifteen mill limitations for current expenses of the municipality. Such procedure is authorized by Section 5625-15 of the General Code. In the event of approval by the electorate the levy could then be made irrespective of the fifteen mill limitation and funds would always be available for the purposes of fulfilling the contract, since Section 5625-23 of the Code directs the budget commission to approve without modification all levies outside of the fifteen mill limitation. By this procedure financial embarrassment resultant from action of the budget commission may be avoided.

Summarizing my conclusion, I am of the opinion that, by virtue of the provisions of Sections 4021, 4022 and 4022-1 of the General Code, the council of a municipality may enter into an agreement with a hospital association organized not for profit, wherein the municipality agrees to furnish the sum of \$10,000 for the purpose of purchasing a hospital site and to provide a one mill levy for a period of not less than five years for the maintenance of the hospital, if, in return therefor, the association agrees to furnish permanent free hospital service to such inhabitants of the municipality as in the opinion of the majority of the trustees of such hospital are unable to pay. The execution of such a contract must, by virtue of the provisions of Section 4022-1 of the General Code, receive the approval of the electors and, in the event the issuance of bonds is necessary, such issuance must also be so approved.

Respectfully,
EDWARD C. TURNER,
Attorney General

2058.

MARRIAGE FEES—JUDGE OF MUNICIPAL COURT OF PAINESVILLE
MAY NOT LEGALLY RETAIN SAME.

SYLLABUS:

1. *The judge of the municipal court of Painesville, Ohio, under the provisions of Sections 1579-1040, 1579-1043 and 1579-1047, General Code, may legally solemnize marriages and charge the same fee that a justice of the peace may charge, which is three dollars.*

2. *Such fee so charged by the municipal judge may not be lawfully retained by him, but is required to be paid into the city treasury, the same as other moneys received by him in his official capacity.*

COLUMBUS, OHIO, May 4, 1928.

HON. SETH PAULIN, *Prosecuting Attorney, Painesville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

“Section 1579-1040 of the General Code of Ohio, confers upon the judge of the Municipal Court of the city of Painesville, authority to perform marriages, said section reads as follows:

‘The judge of the municipal court shall have authority and jurisdiction: To administer an oath authorized or required by law to be administered; to take the acknowledgment of deeds, mortgages or other instruments of writing; and to solemnize marriages.’

I have at hand your opinion under date of November 25, 1927, being opinion 1295 of the Attorney General's Office, the syllabus of which opinion is to the effect that, 'A judge of the Municipal Court of Cincinnati, under the provisions of Sections 1558-14 and 1558-45, General Code, may legally solemnize marriages and charge the same fee that a justice of the peace may charge, which is three dollars. Such fee so charged by the Municipal judge may not be lawfully retained by him, but is required to be paid into the city treasury, the same as other moneys received by him in his official capacity.'

Section 1579-1040 and 1558-45 are practically alike and almost identical word for word, however, Section 1558-14 of the General Code and Section 1579-1037 defining the jurisdiction and general powers of the Municipal Court within Lake County are considerably different in that Section 1558-14 of the General Code provides that the judge of the Municipal Court 'may exercise all powers which are now, or may hereafter be conferred— upon justices of the peace—or are necessary for the exercise of the jurisdiction herein conferred—.'

Section 1579-1037, subdivision 6, provides that the Municipal Court shall have jurisdiction within the limits of the County of Lake 'in all actions of whatever nature or remedy wherein justice of the peace courts now or may hereafter have jurisdiction.'

I am inclined to believe that the authority given by Section 1579-1040 is not a prerogative given to the Municipal Court, but rather to a particular officer of the court, that is, the judge, and that the performing of the marriage ceremony is in no way connected with the performances of the duties of the court.

I have been unable to find a provision in the Municipal Court Act of the City of Painesville, for a charge being made for these services and no direct statement as to the disposition of the money in the event a charge is made. However, if we follow the strict reading of the statute leaving it discretionary with the parties for whom the marriage ceremony was performed, whether or not anything is paid, if any sum is voluntarily paid by the parties for whom the marriage ceremony is performed, is the City of Painesville entitled to fees or contribution or is it to be construed as a gratuity to the officer performing the ceremony and, therefore, to be retained by him.

I shall greatly appreciate an opinion from you upon the point herein involved."

The act providing for the establishment of a Municipal Court in and for the city of Painesville and the townships of Painesville, Perry, Leroy, Concord and Mentor, Lake County, as enacted by the 87th General Assembly, appears in 112 Ohio Laws, 307. The sections are 1579-1031 to 1579-1081, both inclusive, of the General Code. The pertinent part of Section 1579-1036, General Code, providing for the original jurisdiction of the Municipal Court, is as follows:

"The Municipal Court shall have original civil jurisdiction within the limits of the City of Painesville and the townships of Painesville, Perry, Leroy, Concord and Mentor in the following cases:

1. All actions and proceedings of which justices of the peace, or such courts as may succeed justice of the peace courts, now have, or may hereafter be given jurisdiction. * * *

Section 1579-1037, General Code, provides, in part, as follows:

“ * * *

6. In all actions of whatever nature or remedy wherein justice of the peace courts now or may hereafter have jurisdiction.”

The specific authority to the judge of the Municipal Court to solemnize marriages is found in Section 1579-1040, General Code, as follows:

“The judge of the Municipal Court shall have authority and jurisdiction: To administer an oath authorized or required by law to be administered; to take the acknowledgment of deeds, mortgages or other instruments of writing; and to solemnize marriages.”

Section 1579-1043, General Code, provides as follows:

“In all actions and proceedings of which the Municipal Court has jurisdiction, all laws conferring jurisdiction upon the Court of Common Pleas, a police court, or a justice of the peace, or the mayor’s court, giving such court or officer power to hear and determine such cases, prescribing the force and effect of their judgments, orders and decrees, and authorizing or directing the execution or enforcement thereof, shall be held to extend to the Municipal Court, unless inconsistent with this act or plainly inapplicable.”

Section 1579-1047, General Code, provides in part as follows:

“In addition to the exercise of all other powers of a judge of said court, the municipal judge shall render complete monthly and annual reports to the council of the city of Painesville and to the county commissioners * * * The judge of the court may summon and impanel jurors; *tax costs*; * * * ”

Section 1579-1065, General Code, provides for the appointment of a clerk, his compensation, his powers and his duties. The pertinent part of this section is as follows:

“ * * * *He shall collect all fines, costs and penalties. He shall receive all moneys payable into his office and on request shall pay them to persons entitled thereto. On the first business day of each calendar month, he shall pay to the treasurer of the city of Painesville, to the credit of the Municipal Court fund, all moneys collected by his office for official services.* * * *

He shall on the first day of each month in each year, pay to the county treasurer all fines collected for the violation of state laws, except such portion thereof as is or may hereafter be authorized to be paid to a municipal corporation or other political subdivision.

He shall keep a cash book record of all receipts and disbursements, which shall be a public record of the office, and on the expiration of his term be delivered to his successor.”

The pertinent part of Section 1579-1066, General Code, is as follows:

“All moneys paid into the Municipal Court shall as soon as practicable be deposited by the clerk in such banking institution as shall be designated by the judge of the court, there to abide the order of the clerk and to bear interest at the best rate obtainable. * * * ”

The pertinent part of Section 1579-1068, General Code, relative to fees and costs is as follows :

*"Except as otherwise provided for in this act, in civil actions and proceedings wherein the court of a justice of the peace now has jurisdiction 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 a court of the justice of the peace. * * * provided, however, that the Municipal Court, in lieu of the aforesaid methods of taxing costs, by rule of court may establish a schedule of fees and costs to be taxed in all actions and proceedings, in no case to exceed fees and costs provided for like actions and proceedings by general law."*

The compensation provided for the Municipal judge is upon a salary basis as provided in Section 1579-1033, General Code, and is payable monthly as therein provided, to-wit :

"Said municipal judge shall receive compensation, payable out of the treasury of Lake County, the sum of eleven hundred dollars per annum, payable monthly, as the county commissioners may prescribe, and out of the treasury of Painesville Township, Lake County, Ohio, the sum of two hundred dollars per annum, payable monthly as the township trustees may prescribe, and out of the treasury of Perry Township, Lake County, Ohio, the sum of two hundred dollars per annum, payable monthly, as the township trustees may prescribe, and out of the treasury of Mentor Township, Lake County, Ohio, the sum of two hundred dollars per annum, payable monthly as the township trustees may prescribe, and out of the treasury of Concord Township, Lake County, Ohio, the sum of one hundred dollars, per annum, payable monthly as the township trustees may prescribe, and out of the treasury of Leroy Township, Lake County, Ohio, the sum of one hundred dollars, per annum, payable monthly as the township trustees may prescribe, and such further compensation, the sum of eleven hundred dollars, per annum, payable in monthly installments out of the treasury of the City of Painesville, Ohio, as the council or legislative authority may prescribe."

I find no other sections of the General Code relating to the Municipal Court at Painesville which are in any way pertinent to your inquiry, and I find no section specifically authorizing a judge of this court to charge a specified fee for solemnizing a marriage, yet Section 1579-1036, General Code, providing for the original jurisdiction of this court is :

"The Municipal Court shall have original civil jurisdiction within
* * *

All actions and proceedings of which justices of the peace, or such courts as may succeed justice of the peace courts, now have, or may hereafter be given jurisdiction."

And again in Section 1579-1037, General Code :

"In all actions of whatever nature or remedy wherein justice of the peace courts now or may hereafter have jurisdiction."

And again in Section 1579-1043, General Code :

"In all actions and proceedings of which the Municipal Court has jurisdiction, all laws conferring jurisdiction upon the Court of Common Pleas, a police court, or a justice of the peace, or the mayor's court, * * * prescribing the force and effect of their judgments, orders and decrees, * * * shall be held to extend to the Municipal Court, unless inconsistent with this act or plainly inapplicable."

You state in your letter that :

"I am inclined to believe that the authority given by Section 1579-1040 is not a prerogative given to the Municipal Court, but rather to a particular officer of the court, that is, the judge, and that the performing of the marriage ceremony is in no way connected with the performances of the duties of the court."

I am unable to agree with this statement in your letter. It is apparent that it was the intention of the Legislature in enacting the Municipal Court act for the city of Painesville and certain townships of Lake County to confer upon the judge of the Municipal Court the authority to exercise, among other things, all the powers which were then, or that might thereafter, be conferred upon justices of the peace.

One of the powers which the justices of the peace had then under the provisions of Section 11182, General Code, was the power to solemnize marriages and to charge a fee therefor. It is my opinion that the Municipal Court act above mentioned authorizes the judge of the Municipal Court of Painesville to solemnize marriages the same as the justice of the peace might do, and also that when it provides that "the judge of the court may * * * tax costs * * * " it contemplates that he may charge the usual fee therefor as provided by law for the justice of the peace in the performance of the same duty.

It is pertinent to observe that the General Assembly, as shown in 109 Ohio Laws, 304, amended Section 1746-2, General Code, providing fees for justices of the peace in miscellaneous cases, increased the fee from two dollars to three dollars for performing the marriage ceremony.

The right to perform the marriage ceremony is made an official act of the judge of the Municipal Court rather than the prerogative of the individual who happens to constitute that court. The right to perform the marriage ceremony is specifically conferred in the act in question. For such services the law now provides a fee of three dollars. No distinction can consistently be made in the collection and disposition of the fee for performing the marriage ceremony different from that made and applied in the collection and disposition of fees and costs charged and collected for any other official act.

I am therefore of the opinion that the judge of the Municipal Court of the city of Painesville may legally tax a fee of three dollars for solemnizing marriages. It is also my opinion that such judge may not legally retain the fee so charged by him, but that the same should be paid into the treasury of the city of Painesville the same as other moneys received by him in his official capacity.

Respectfully,
EDWARD C. TURNER,
Attorney General.