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1. FINES ASSESSED BY THE COURT OF COMMON PLEAS, IN JURY TRIAL CASES INVOLVING VIOLATIONS OF A MUNICIPAL ORDINANCE, SHOULD BE PAID INTO THE COUNTY TREASURY—

2. TREASURER OF A MUNICIPAL CORPORATION NOT AUTHORIZED TO DEMAND AND RECEIVE SUCH FINE—  
§§2937.08, 733.44, 733.46, R.C.

## SYLLABUS:

1. Where pursuant to Section 2937.08, Revised Code, a jury trial case involving a violation of a municipal ordinance is certified to the court of common pleas of the county, and said court imposes a fine for the violation, the amount of the fine collected should be paid into the treasury of the county in accordance with the provisions of Section 2949.11, Revised Code.

2. Where such a fine is paid into the treasury of the county, Sections 733.44 and 733.46, Revised Code, do not authorize the treasurer of the municipal corporation to demand and receive such fine.

Columbus, Ohio, June 26, 1961

Hon. James A. Rhodes, Auditor of State  
State of Ohio, Columbus 16, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"In Opinion No. 1858 of 1960 it was ruled that, 'Where pursuant to Sections 2937.08 and 2938.04, Revised Code, a magistrate is required to certify a case involving violation of a local ordinance to a court of record in the county such case may be certified to the court of common pleas of the county or to any municipal court in the county'. In the event there is no municipal court and the case is certified to the court of common pleas, the question arises as to what distribution shall be made of any fine that may be imposed as a result of the violation of the municipal ordinance.

"Section 2949.11 Revised Code provides that:

'Unless otherwise required by sections 3375.50 to 3375.52, inclusive of the Revised Code, an officer who collects a fine shall pay it into the treasury of the county in which such fine was assessed, within twenty days after the receipt thereof, to the credit of the general fund. The county treasurer shall issue duplicate receipts therefor, and the officer making the collection shall deposit one of said receipts with the county auditor.'

"Should the fine assessed for the violation of a municipal ordinance in a case certified to the court of common pleas pursuant to Sections 2937.08 and 2938.04 of the Revised Code be paid into the county treasury pursuant to this section?

"If the fine should be so paid into the county treasury, is there any authority in law for the municipal treasurer to demand such fine from the county treasurer pursuant to Revised Code Section 733.44 or 733.46 of the Revised Code."

In an ordinance case in a court not of record where the accused is entitled to a jury trial and does not waive his right to a jury, the magistrate must certify the case of a court of record of the county. In this regard, Section 2937.08, Revised Code, reads in part :

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“If the defendant in such event does not waive right to jury trial, then the magistrate shall require the accused to enter into recognizance to appear before court of record in the county, set by such magistrate, and the magistrate shall thereupon certify all papers filed, together with transcript of proceedings and accrued costs to date, and such recognizance if given, to such designated court of record. Such transfer shall not require the filing of indictment or information and trial shall proceed in the transferee court pursuant to Chapter 2938. of the Revised Code.”

Courts of record to which such cases may be certified are municipal courts and the court of common pleas of the county (Opinion No. 1858, Opinions of the Attorney General for 1960).

Courts not of record in Ohio are mayor's courts, police courts, and county courts. Thus, mayors, police judges, and county court judges are magistrates who must certify ordinance cases under the above-cited provision of Section 2937.08, Revised Code, and these officers are all designated as magistrates by Section 2931.01, Revised Code.

Regarding the distribution of fines collected by these magistrates in ordinance cases, specific provisions of law govern in each case. All fines, forfeitures, and costs in ordinance cases collected by a mayor, or which in any manner come into his hands, are paid by him into the treasury of the municipal corporation on the first Monday of each month (Section 733.40, Revised Code). All fees, fines, and forfeitures collected by a police judge are disposed of in the same manner (Sections 1903.12 and 1903.93, Revised Code). Fines collected by a county court judge in municipal ordinance cases are paid into the treasury of the municipal corporation whose ordinance was violated, subject to Sections 3375.50 and 3375.53, Revised Code (Division (C) of Section 1907.10, Revised Code).

All of the above provisions for payment of fines are of a special nature and, as such, take precedence over the general provisions of Section 2949.11, Revised Code, referred to in your letter of request. The general rule in this regard is that a special statutory provision which applies to a specific subject matter constitutes an exception to a general statutory provision

covering other subject matter as well as the specific subject matter. (*Fisher* subject matter constitutes an exception to a general statutory provision pertain, however, only to moneys collected by the particular magistrates named, and cannot be extended to the courts of record to which cases are certified under Section 2937.08, *supra*).

Where a case is certified to a municipal court, there is no question as to the disposition of any fine collected in that court. Division (F) of Section 1901.31, Revised Code, clearly provides that fines collected for violations of municipal ordinances shall be paid into the treasury of the municipal corporation whose ordinance was violated. As to a case certified to a court of common pleas, however, I am unable to find any provision of law authorizing the payment of a fine collected in an ordinance case to the municipal corporation whose ordinance was violated. Thus, I conclude that where such a fine is collected in a case certified to a court of common pleas, the general provisions of Section 2949.11, *supra*, must be followed and the fine should be paid into the treasury of the county. (Subject to Sections 3375.50 to 3375.52, inclusive, Revised Code, dealing with payments to law libraries).

In reaching the above conclusion I am aware of the provision of Section 2303.08, Revised Code, that the clerk of the court of common pleas shall "pay over to the proper parties all moneys coming into his hands as clerk". In this instance, however, the statutes do not say that the proper party to receive the fine is the municipal corporation where the violation occurred; and Section 2949.11, *supra*, does state that an officer who collects a fine shall pay it into the treasury of the county. Thus, the proper party would be the treasurer of the county and not the municipal corporation.

Your second question is whether under either Section 733.44 or 733.46, Revised Code, the treasurer of a municipal corporation may recover from the county treasury those fines collected by the court of common pleas in ordinance cases certified under Section 2937.08, *supra*. In this regard, Section 733.44, *supra*, reads :

"The treasurer of a municipal corporation shall demand and receive, from the county treasurer, taxes levied and assessments made and certified to the county auditor by the legislative authority of such municipal corporation and placed on the tax list by such auditor for collection, moneys, from persons authorized to collect or required to pay them, accruing to the municipal corporation

from judgments, fines, penalties, forfeitures, licenses, and costs taxed in mayor's or police courts, and debts due the municipal corporation. Such funds shall be disbursed by the treasurer on the order of any person authorized by law or ordinance to issue orders therefor."

The fines here concerned are not "taxes levied and assessments made," nor are they fines "taxed in mayor's or police courts." Further, I find no reason to consider them "debts due the municipal corporation." Accordingly, I conclude that the treasurer of the municipal corporation may not recover the fines in question under said Section 733.44.

As to Section 733.46, *supra*, that section reads :

"The treasurer of a municipal corporation shall receive and disburse all funds of the municipal corporation and such other funds as arise in or being to any department or part of the municipal corporation."

The above provision clearly pertains to the duty of a treasurer of a municipal corporation to receive and disburse funds of the municipal corporation, while the question at hand relates to the disposition of fines collected by a court of common pleas. In the absence of any statutory direction, I am unable to conclude that the fines should be considered funds of the municipal corporation. I conclude, therefore, that the treasurer of the municipal corporation may not recover the fines in question under said Section 733.46.

In conclusion, it is my opinion and you are advised :

1. Where pursuant to Section 2937.08, Revised Code, a jury trial case involving a violation of a municipal ordinance is certified to the court of common pleas of the county, and said court imposes a fine for the violation, the amount of the fine collected shall be paid into the treasury of the county in accordance with the provisions of Section 2949.11, Revised Code.

2. Where such a fine is paid into the treasury of the county, Sections 733.44 and 733.46, Revised Code, do not authorize the treasurer of the municipal corporation to demand and receive such fine.

Respectfully,

MARK McELROY

Attorney General