

Note from the Attorney General's Office:

1924 Op. Att'y Gen. No. 24-2098 was clarified by
1981 Op. Att'y Gen. No. 81-096.

2096.

APPROVAL, BONDS OF BRUSHCREEK TOWNSHIP RURAL SCHOOL DISTRICT, SCIOTO COUNTY, \$23,000.00, SCHOOL IMPROVEMENTS.

COLUMBUS, OHIO, December 19, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2097.

APPROVAL, BONDS OF CITY OF CANTON, STARK COUNTY, \$11,972.31, STREET IMPROVEMENTS.

COLUMBUS, OHIO, December 19, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2098.

WHERE MAYOR ACCEPTS CHECK IN PAYMENT OF FINE AND THEN MAKES SETTLEMENT WITH PROPER TREASURY—HE CANNOT LEGALLY BE REIMBURSED IF SUCH CHECK IS RETURNED "NOT GOOD".

SYLLABUS:

A mayor, accepting a check in payment of a fine and then making settlement with the proper treasury, cannot legally be reimbursed from such treasury if such check is returned "not good", nor can he hold the amount of such check from subsequent settlements.

COLUMBUS, OHIO, December 20, 1924.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen:—

Acknowledgment is hereby made of your request for opinion, as follows:

"Bureau examiners occasionally find that a mayor, acting in the judicial capacity, accepts a check from a defendant in payment of a fine and costs assessed for violation of a state prohibition or motor vehicle law. The mayor indorses such check and deposits it in a bank to his credit as mayor. He makes settlement with the proper treasuries for all fines collected, including that paid by check. Subsequently such check is returned 'not good.'

"Question 1. Under these conditions may the mayor be legally reimbursed from such proper treasuries for the amount of the check?"

"Question 2. Could the mayor legally deduct the amount of such check from subsequent settlements?"

There is no authority under the laws of Ohio for a mayor to accept a check in payment of a fine, though some states have laws of this nature.

Section 4270, General Code, reads:

"All fines and forfeitures in ordinance cases and all fees collected by the mayor, or which in any manner comes into his hands, dne such mayor or to a marshal, chief of police or other officer of the municipality and any other fees and expenses which have been advanced out of the municipal treasury, and all moneys received by such mayor for the use of the municipality, shall be by him paid into the treasury of the municipality on the first Monday of each month, provided that the council of a village may, by ordinance, authorize the mayor and marshal to retain their legal fees in addition to their salaries, but in such event a marshal shall not be entitled to his expenses. At the first regular meeting of council in each and every month, he shall submit a full statement of all moneys received, from whom and for what purposes received and when paid into the treasury. Except as otherwise provided by law, all fines and forfeitures collected by him in state cases together with all fees and expenses collected, which have been advanced out of the county treasury, shall be by him paid over to the county treasury on the first business day of each month."

Section 6212-19, General Code, reads:

"Money arising from fines and forfeited bonds shall be paid one-half into the state treasury credited to the general revenue fund, one-half to the treasury of the township, municipality or county where the prosecution is held, according as to whether the officer hearing the case is a township, municipal or county officer."

and there are other special statutes covering payment of fines by mayors.

"The rule has been laid down that in the absence of statute an officer has no authority to receive anything other than money in payment of a fine."

19 CYC. 548.

This rule has been applied in Texas, Arkansas, Massachusetts, Wisconsin and Illinois.

34 Tex. 131;

71 Ark. 467.

15 Ill. App. 663.

"A village attorney took a note payable to himself in satisfaction of a fine regularly imposed by a judicial officer for an offense against the ordinances of the village and released the defendant from imprisonment. HELD, that the consideration for the note was illegal, no authority being shown for the attorney to thus compromise such judgment."

51 Wis. 115:

"A county board of supervisors has no power to take a note and mortgage for the amount of a fine imposed on a person convicted of assault

and battery, with a view to the release of such person from imprisonment for non-payment of the fine; and the instruments so taken are void."

4 Cush. Mass. 578:

"A promissory note, given to a magistrate for the amount of fines and costs imposed by him upon the maker of the note on a criminal charge, is void, for want of consideration moving from the payee personally, and also because the transaction is in violation of a public duty."

Corpus Juris, 1152.

In these cases, notes given in payment of fines were held void, as Court had no authority to take notes; and the same rule applies to checks. A Court taking a check takes it at his own risk.

A mayor, taking a check in payment of a fine, endorsing and depositing same, is in the same position as any endorser of such a negotiable instrument. The fact that he holds the office of mayor does not make him official custodian of moneys coming into his hands. The law holds him personally responsible for moneys collected by him, and the fact that he keeps an account in the bank in his name as mayor does not relieve him of the responsibility.

In the case you mention, the mayor did not turn the original check in to the county or city nor keep it in his own possession, but cashed it for the party paying the fine, and having paid the amount of such fine to the city, county or state, by his check, he cannot recover same nor hold the amount out of other fines collected by him.

Respectfully,

C. C. CRABBE,

Attorney General.

2099.

COURT COSTS—WHEN SAME MAY BE PAID FROM FUND DESIGNATED "PROSECUTION AND TRANSPORTATION OF CONVICTS"—SECTION 13755, GENERAL CODE, CONSTRUED.

SYLLABUS:

1. *In state cases, proper court costs, including the costs of bills of exceptions and transcripts, incurred by the accused in securing a reversal of a judgment as provided for in Section 13755, General Code, is "expenses provided by statute" within the meaning of the appropriation designated under the heading "prosecution and Transportation of Convicts" (110 O. L. 600), and upon proper proof of the incurring of such expense it may be legally paid from such fund.*

2. *Such provision applies to both misdemeanors and felonies.*

3. *The accused may recover such costs in cases taken on error from a justice or mayor to the court of common pleas, when reversed.*

4. *The provisions of Section 13755 do not apply to any costs except those incurred by the plaintiff in error.*

5. *Reasonable costs actually incurred by the accused employing a stenographer to take testimony and transcribe the same in courts inferior to the court of common pleas, is a proper expense.*