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CLEVELAND MUNICIPAL COURT—NO CONFLICT BETWEEN SECTIONS 1579-1 TO 1579-54 G. C. AND CHARTER PROVISIONS, CITY OF CLEVELAND, AS TO RIGHT OF CLERK, MUNICIPAL COURT, TO EXPEND FUNDS.

COUNCIL, SUBJECT TO MINIMUM STATUTORY REQUIREMENTS, SHALL DETERMINE CITY'S PORTION OF COMPENSATION OF OFFICERS AND EMPLOYEES OF MUNICIPAL COURT.

EXPENDITURES, MAINTENANCE OF MUNICIPAL COURT, UNDER DISCRETION OF JUDGES AND CLERK, BUT WITHIN APPROPRIATIONS BY COUNCIL.

SYLLABUS:

There is no conflict between Sections 1579-1 to 1579-54, General Code, under authority of which the Municipal Court of Cleveland is established, and the charter provisions of the City of Cleveland as to the right of the clerk of the municipal court to expend funds. The city's portion of the compensation of the officers and employees of the municipal court is to be determined by the council subject to the minimum statutory requirements of the act establishing the Municipal Court of Cleveland. Expenditures for maintaining the municipal court are to be made under the discretion of the judges and the clerk but within the appropriations therefor made by the council.

Columbus, Ohio, October 23, 1940.

Bureau of Inspection and Supervision of Public Offices,
State House Annex, Columbus, Ohio.

Gentlemen:

Your request for my opinion reads as follows:

"We are inclosing a letter received in this office from the Assistant Director of Law, City of Cleveland, in which it is shown that two former rulings concerning the Municipal Court of that City are difficult of reconciliation.

Therefore, may we request that you examine this correspond-

ence and give us your opinion in answer to the following question :

Question. Do the provisions of the Charter of the City of Cleveland govern over the expenditures of the Municipal Court of Cleveland, or does the State Law give the Clerk of Court unlimited control over the expenses of said Court?"

Section 1 of Article IV of the Constitution of the State of Ohio is as follows :

"The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas, courts of probate, and such other courts inferior to the courts of appeals as may from time to time be established by law."

Under this authority the legislature has established the Municipal Court of Cleveland by the enactment of Sections 1579-1 to 1579-54, General Code. Provision is made for the compensation of the judges in Section 1579-3, General Code, and for the clerk in Section 1579-40, General Code. The compensation of the chief deputy clerk, which shall not be less than \$1500.00 per annum, and other deputy clerks, which shall not be less than \$1200.00 per annum, is to be fixed by the council as provided in Section 1579-44, General Code, and is payable "out of the treasury of the City of Cleveland." In the same manner Section 1579-45, General Code, provides that the bailiff's compensation shall be fixed by the council at not less than \$3600.00 per annum and deputy bailiffs' compensation shall be fixed at not less than \$1200.00 per annum by the council, payable out of the city treasury. The clerk is authorized by Section 1579-41, General Code, to appoint his chief deputy clerk, one private secretary and one personal stenographer. He is further authorized by Section 1579-46, General Code, to select a chief clerk and such number of deputy clerks as the city council may determine from eligible lists furnished by the Civil Service Commission of the City of Cleveland. It thus appears that the number of deputy clerks and their compensation and the compensation of the chief deputy clerk must be determined by the council and paid from the city treasury.

The right of the state to establish and control municipal courts was not curtailed by the adoption of Section 3, Article XVIII of the Constitution for the state thereby only surrendered to the municipalities the sovereign right to govern themselves locally. As to all other sovereign powers, the right of the state remains supreme. The municipalities continue their status as political subdivisions of the state. The power to create courts inferior to the Court of Appeals remains in the legislature. The power to create such

courts carries with it the power to require the subdivisions served thereby to provide for the expenses thereof. This was the opinion of the Supreme Court in the case of *State, ex rel. Ramey, v. Davis*, 119 O. S., 596, wherein the first four branches of the syllabus are as follows:

“1. The sovereignty of the state in respect to its courts extends over all the state, including municipalities, whether governed by charter or general laws.

2. None of the various provisions of Article XVIII of the Constitution of Ohio are effective to abridge the sovereignty of the state over municipalities in respect to its courts.

3. The legislature has the exclusive power to create courts inferior to the Courts of Appeals.

4. The power to create a court carries with it the power to define its jurisdiction and to provide for its maintenance.”

Ellis, City Solicitor, v. Urner, Auditor, 41 O. App., 183, is to the same effect, the first branch of the syllabus reading:

“1. Legislature, having power to provide for municipal courts and their employees, has power to provide who shall pay, and amount of, their compensation (Section 1558-33, General Code (113 Ohio Laws, 46).”

Having concluded that the clerk has no power to provide quarters and fix compensation of his deputies, there remains the question of his power to purchase office supplies and equipment. Section 1579-48, General Code, is as follows:

“The council of the city of Cleveland shall provide suitable accommodations for the municipal court and its officers including a private room for each judge and sufficient jury room. The council shall also provide for the use of the court complete sets of the reports of the supreme and inferior courts of Ohio and such other authorities as are deemed necessary, and shall provide for each court room the latest edition of the General Code of Ohio, and necessary supplies including telephone, stationery, furniture, heat and light. The expense of maintaining the court shall be paid out of the treasury of the city of Cleveland.”

Section 1579-2, General Code, provides that “the municipal court shall consist of ten judges, one of whom shall be chief justice and all of whom shall at the time of their election be qualified electors and residents of the city of Cleveland and shall have been admitted to the practice of law at least five years.”

Section 1579-21, General Code, reads in part as follows:

"In addition to the exercise of all the other powers of a judge of said court, the chief justice shall have the general superintendence of the business of the court, and may classify and distribute among the judges the business pending in said court. He shall render a complete annual report to the council of the city of Cleveland, covering the preceding year, which report shall show the work performed by the court, a summary of the expenses of the civil and criminal branches of the court respectively, a statement of receipts and expenditures, the number of cases heard, decided and settled by the court and by each judge thereof, the number of cases reviewed by the court on error, the number of decisions of the municipal court reversed or affirmed by a reviewing court, the number of days and hours of attendance in court of each judge, and such other data as the council may require. Said report shall be printed by the council for free distribution to the public.

The judges of the court may sit separately or otherwise; shall meet at least once in each month and at such other times as the chief justice may determine; shall prescribe forms; establish a system for the docketing of causes, motions and demurrers; adopt and publish rules governing practice and procedure not otherwise provided for in this act; and designate the mode of keeping and authenticating the records of proceedings had before them.

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Any order made by the chief justice, under the special powers conferred upon him in this act, may be vacated, amended or modified, by the vote of a majority of the judges of the court."

Since you have not submitted with your inquiry the pertinent provisions of the Cleveland charter, I assume they are substantially as quoted in the 1916 and 1917 Attorney General's Opinions referred to in your inquiry. The Act establishing the Municipal Court of Cleveland with its subsequent amendments is silent as to the exact method of purchasing supplies and equipment. I am inclined to follow the Opinions of the Attorney General for 1917, No. 285, wherein it is said on page 716:

"Therefore, as section 1579-48, first quoted, provides for the expense of maintaining the court being paid out of the treasury of the city of Cleveland; and as pointed out, the charter of the city in no way deals with this court, nor does it come under the head of any department for which the commissioner of purchases and supplies is authorized to act, it would seem that the matter would be under the discretion of the clerk and the judges of the municipal court, subject to appropriations to be made by council."

I have examined this opinion as well as the Opinions of the Attorney General for 1916, No. 2079, referred to in your inquiry, in so far as they

are pertinent to your present question, and do not believe there is any conflict. The 1916 opinion holds, as shown by the first branch of the syllabus:

“1. The provisions of the Cleveland municipal charter govern the appropriation and expenditure of the city’s portion of the cost and expense of maintaining the municipal court of the said city.”

The following observation is also found on page 1872 of the opinion:

“The Cleveland municipal court act confers no authority on the clerk of the court to purchase supplies or make expenditures, and its provisions imposing upon the city the duty of paying a part of the salary of the judges and certain other officers of the court and the entire expense of maintaining the court are not in conflict with the Cleveland charter.”

In other words, as I have already pointed out herein, Sections 1579-1 to 1579-54, General Code, which authorize the establishment of the Municipal Court of Cleveland, confer no specific power on the clerk to purchase supplies and equipment. The duty of providing quarters and fixing salaries is in part imposed upon the council which acts under authority of the charter. Other expenses of the court are to be paid from the funds provided for the court by the council. The first branch of the syllabus of the 1917 opinion reads:

“1. Expenditures for maintaining the municipal court of Cleveland are under the discretion of the clerk and judges of the municipal court, subject to appropriations to be made by council.”

This expresses the same thought by different words. It is the duty of the council to appropriate funds for the operation of the court, but the actual expenditures are made by the court from the funds thus appropriated. Thus the two opinions appear to have reached the same conclusion and I find no conflict between the laws of the State of Ohio and the provisions of the charter of the City of Cleveland, at least in so far as such charter provisions have been brought to my attention.

In specific answer to your inquiry, it is my opinion that there is no conflict between Sections 1579-1 to 1579-54, General Code, under authority of which the Municipal Court of Cleveland is established, and the charter provisions of the City of Cleveland as to the right of the clerk of the municipal court to expend funds. The city’s portion of the compensation of the officers and employees of the municipal court is to be determined by the council

subject to the minimum statutory requirements of the act establishing the Municipal Court of Cleveland. Expenditures for maintaining the municipal court are to be made under the discretion of the judges and the clerk but within the appropriations therefor made by the council.

Respectfully,

THOMAS J. HERBERT,
Attorney General.