

You are therefore advised that a Federal Reserve Bank comes within the provisions of section 6295, General Code of Ohio.

Respectfully,
C. C. CRABBE,
Attorney-General.

2140.

MAYOR, MARSHAL OR CHIEF OF POLICE IS ENTITLED TO FEES IN STATE CASES—SECTION 4270 G. C. CONSTRUED.

SYLLABUS:

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.

COLUMBUS, OHIO, January 12, 1925.

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

GENTLEMEN:—This will acknowledge receipt of your letter of December 23, 1924, reading as follows:

The third paragraph of the syllabus of the decision in the case of State ex rel. Nead vs. Nolte, No. 18551, decided by the Supreme Court December 16, 1924, reads:

‘Section 4270, General Code, as amended in 106 O. L., Pt. 2, page 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.’

‘The Court did not have before it the question of fees earned by a chief of police of a city or marshal of a village, in state cases, but such question is of equal importance to the Bureau in view of the above decision and we respectfully request your opinion on the following matters:

“Question 1. Is the chief of police in a city entitled to fees in state cases?”

“Question 2. Is the marshal of a village entitled to fees in state cases without action by the municipal council?”

Provision has been made by the legislature for charging fees earned by a mayor, marshal and chief of police.

Section 4213, General Code, reads:

“The salary of any officer, clerk or employe shall not be increased or diminished during the term for which he was elected or appointed, and, except as otherwise provided in this title, all fees pertaining to any office shall be paid into the city treasury.”

Section 4219, General Code, is as follows:

“Council shall fix the compensation and bonds of all officers, clerks and employes in the village government, except as otherwise provided by law. All bonds shall be made with sureties subject to the approval of the mayor. The compensation so fixed shall not be increased or diminished during the

term for which any officer, clerk or employe may have been elected or appointed. Members of the council may receive as compensation the sum of two dollars for each meeting, not to exceed twenty-four meetings in any one year."

Section 4270, General Code, which directly affects the questions asked, is in the following language:

"All fines and forfeitures in ordinance cases and all fees collected by the mayor, or which in any manner comes into his hands, due 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."

The Supreme Court of Ohio has construed Section 4270 in the case of *State, ex rel. Nead, vs. Nolte*, No. 18551, on December 16, 1924. The third syllabus of that opinion reads as follows:

"Section 4270, General Code, as amended in 108 O. L., pt. 2, page 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."

The Court in that opinion says:

"Section 4270 of the General Code, however, appears in a chapter relating to both cities and villages. The section which was repealed, and which formerly carried the same number, 4270, was not confined to villages, but apparently applied to all municipalities, and if the general provisions of the section as amended, other than the proviso, should not be construed as applying to all municipalities there would be no legislation whatever upon that subject pertaining to cities.

"The conclusions we have reached are in harmony with the decision of *City of Portsmouth vs. Milstead*, 8 O. C. C. (N. S.), 114, affirmed by this court without report 76 Ohio St. 597.

"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. The judgment of the court of appeals will therefore be affirmed."

In the case of *City of Portsmouth vs. Milstead*, the syllabus reads:

“The provisions of section 1536-633 (known as section 126 of the Municipal Code) requiring ‘that all fees pertaining to any office shall be paid into the city treasury’ has reference to municipal fees solely, or such fees as may be fixed by municipal authority.

“Said section does not authorize cities to interfere with the fees of mayors or chiefs of police in state criminal cases; whether such authority can be delegated to municipalities, *Quære?*”

This case was affirmed, without report, in 76 Ohio St. 597.

From the language of the Court in the above two cases, it is apparent that fees taxed for a mayor, marshal or chief of police in state cases are not governed by sections 4213, General Code, 4219, General Code, or 4270, General Code, but should be paid to such mayor, marshal or chief of police, respectively, for their personal use.

This is in accord with the interpretation of section 4270 General Code, by the Supreme Court in the *Nolle* case.

Respectfully,
C. C. CRABBE,
Attorney-General.

2141.

COUNTY AGRICULTURAL SOCIETY—SECTION 9887 G. C. CONSTRUED.

SYLLABUS:

County commissioners may not legally pay out money for the payment of the rental on a lease held by a county agricultural society unless the county society has expended a like amount for lease or improvement of such site.

COLUMBUS, OHIO, January 12, 1925.

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

GENTLEMEN:—You have requested my opinion on the following:

“When a county agricultural society has leased real estate whereon to hold fairs for a term of twenty years, may the county commissioners legally pay out of the county treasury the annual rental provided for in the lease without any payment whatever on the part of the agricultural society? The rental so paid by the county is in addition to the amount contributed to the agricultural society under the provisions of section 9894 G. C., and also in addition to the contribution provided for in section 9880 G. C.”

Section 9887, which seems to be the only authority authorizing county commissioners to expend money for the purchase or lease of grounds for the agricultural society, provides:

“When a county society has purchased, or leased real estate whereon to hold fairs for a term of not less than twenty years, or the title to the grounds is vested in fee in the county, but the society has the control and management of the lands and buildings; if they think it for the interests of the county, and society, the county commissioners may pay out of the county treasury the same amount of money for the purchase or lease and improvement of such site as is paid by such society or individuals for that purpose, and may levy