

authority of the director of public safety and the ordinances of council. Among other duties he is charged with the exclusive control, subject to such rules and regulations as may be prescribed by the director of public safety, of the stationing and transfer of all patrolmen and other officers and employes of the police department. It is also observed that under provisions of section 4378 G. C. the police force is expressly required to preserve the peace, protect persons and property, and obey and enforce all ordinances of council and all criminal laws of the state and of the United States. Analyzing the duties of the office cited and imposed by law upon the chief of police, it would seem obvious that the nature of such office and employment requires that the chief of police shall devote full time to the performance of said duties and should hold himself in constant readiness to enforce the ordinances of council and preserve the peace of the municipality. A similar view of the duties of the chief of police is held by a former opinion of this department and found in Opinions of the Attorney-General, Volume I, 1913, page 421.

Upon consideration, therefore, it would seem conclusive that the duties of the offices considered are incompatible, and that a chief of police of a city may not lawfully perform the duties of a probation officer, or receive the compensation of such an officer while acting in the capacity of chief of police.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2875.

FELONY CASES—CLERK OF COURTS SHOULD PAY TO CITY TREASURER FEES TAXED FOR CHIEF OF POLICE OF CITY IN SAID CASES—SEE SECTION 3016 G. C. (109 O. L. 173).

Under the provisions of section 3016 G. C., as amended in 109 O. L. 173, moneys coming into the hands of the Clerk of Courts in felony cases, which have been taxed as fees for the chief of police of a city, in view of the further provisions of section 4270 G. C., should be paid to the city treasurer. In other words, the phrase "persons entitled thereto" used in section 3016 G. C., refers to persons who are legally entitled to receive the payment of such funds and does not refer alone to persons entitled to receive such funds for their own use.

COLUMBUS, OHIO, February 20, 1922.

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

GENTLEMEN:—Your letter of recent date reads as follows:

"We are respectfully requesting you to furnish this department your opinion upon the following matter:

Section 3016 G. C., as amended, 109 O. L. 173, provides that in felonies when the defendant is convicted, the fees of the various magistrates and their officers shall be inserted in the judgment of conviction and when collected shall be disbursed by the clerk of courts to the persons entitled thereto.

Question 1. Is the chief of police who receives a salary from the city, and who is authorized under section 4534 G. C., to tax the same fees as a

constable, whose fees are included in the bill of costs in a felony case and paid by the state, the person entitled to such fees to be paid to him by the clerk of courts, and if so, is he authorized to retain them for his own use, or is he required to pay them into the city treasury? (See section 4270 G. C.)

Question 2. Or should the clerk of courts pay them into the county treasury or the municipal treasury? In other words, what disposition is to be made of the fees of a chief of police in such cases?"

In connection with your inquiry attention is invited to an opinion rendered by this department and reported in Opinions of the Attorney-General for the year 1920, at page 735, in which it was held:

"Under the provisions of section 4270 as amended in H. B. 294 the mayor or chief of police of a city may not legally retain for his own use fees assessed in state cases. Such fees should be paid into the municipal treasury except in cases where fees are advanced by the county treasury, in which case they should be remitted to the county treasury."

While section 3016 G. C., as amended 109 O. L. 173, provides that the costs shall be paid to the "persons entitled thereto," it will be readily seen that if the conclusion in the opinion above quoted is correct, the chief of police is not the person "entitled thereto." Your department had been following this rule prior to the amendment of section 3016. While the language is not as clear as it should be, it must be remembered that the legislature is assumed to have had knowledge of the existence of section 4270 G. C. at the time of the amendment of section 3016 at the last session of the legislature.

In the case of *State vs. Hirstius*, 25 C. C. (n. s.) 177, it is indicated that the construction given to a doubtful statute by executive officers is entitled to great weight. Thus, it will be seen that section 4270 existed in its present form and the construction as above set forth had been adopted at the time of the last enactment of said section 3016. In view of this situation it is believed to be proper to charge the legislature with having had knowledge of the said provision of section 4270 to the effect that the chief of police of a city cannot receive for his own use the fees that are taxed for his services. If this conclusion is correct, then it follows that the legislature failed to use language that would repeal the provisions of section 4270 in the legislation to which you refer.

In considering the provisions of section 3016 and its related sections, it would seem that it was the intent of the legislature that the fees taxed for a chief of police are to be paid into the municipal treasury.

In view of the foregoing it is the opinion of this department that it was the intent of the legislature in the enactment of section 3016, in 109 O. L., 173, that the fees taxed for a chief of police of a city should be paid by the clerk to the treasurer of the city. In other words, the phrase "person entitled thereto" as used in said section refers to the municipal treasurer in the case you present. The word "person" has been construed to mean "party," "party to an action," "joint owner," etc. See Words and Phrases, Vol. 6, page 5322.

It is believed logical to conclude that the phrase as used in section 3016 refers to the persons entitled to receive payment and does not refer to the persons entitled to the use of such funds. Inasmuch as all public funds reach the public treasury by

going through the hands of some officer, there must necessarily be some person who is entitled to receive the payment of such funds.

In view of this determination, it will be unnecessary to specifically answer your question.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2876.

INHERITANCE TAX LAW—METHOD OF TAXATION OF SUCCESSIONS IN CERTAIN WILL DISCUSSED.

Method of taxation of successions in a certain will discussed.

COLUMBUS, OHIO, February 20, 1922.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The Commission in a recent letter encloses an extract from a will and requests the advice of this department as to the method of determining the inheritance tax on that part of the estate of the testator covered thereby. The extract from the will follows:

“Fifth: I give, devise and bequeath all the rest, residue and remainder of my estate, both real and personal, of which I shall die seized or possessed, or to which I may be entitled at the time of my death, to my executors and trustees named in the twelfth clause of this my will and herein-after designated as my executors and trustees, and to whoever may be appointed to succeed them; UPON THE TRUST, nevertheless, to invest and reinvest my said estate, from time to time as occasion may require, and to collect the interest and income derived therefrom, and after paying all taxes, assessments, interest charges, and such sums of money as may be necessary to properly preserve and protect and manage my real and personal estate, to pay over the interest and income thereof, at such periods as they shall deem best in equal portions, to my three children, A., D. and M. for their education, maintenance and support, until one of my said children reaches the age of thirty years.

Sixth: When one of my said children shall reach the age of thirty years, I direct my executors and trustees to divide my residuary estate into as many equal parts as I shall have children then living, and to pay over one of such parts to the child so surviving at the age of thirty years for its own use and benefit absolutely and forever.

Seventh: As to the other parts into which my said residuary estate shall be divided, I direct that my said executors and trustees set apart and hold upon trust, as separate trust funds, one of such parts for the benefit of each one of my children as shall not then have reached the age of thirty years, and to pay over the interest and income of said several parts at such periods as they shall deem best to such children, respectively, for their respective education, maintenance and support until they severally attain the age of thirty years.