

3271.

MUNICIPAL COURT OF CLEVELAND—SCHEDULE OF FEES AND COSTS PROVIDED BY SECTION 1579-47 G. C. IN CONFLICT WITH THOSE PRESCRIBED BY SENATE BILL 14 (109 O. L. 12)—WHAT STATUTES REGULATE FEES AND COSTS IN CRIMINAL PROCEEDINGS IN SAID COURT.

1. *A schedule of fees and costs adopted by the municipal court of Cleveland under the authority of section 1579-47 G. C. which fixes said fees and costs at a different amount than that prescribed by Senate Bill No. 14 (109 O. L. 12) is in conflict with the latter enactment, in which event those provisions of section 1579-47 authorizing the municipal court to provide such a schedule are repealed by said Senate Bill No. 14.*

2. *The fees and costs taxable in criminal proceedings in the municipal courts of Cleveland, are now regulated by Senate Bill No. 14, 109 O. L. p. 12, and the provisions of sections 1746, 3347, 3014, 3014-1, 12375 of the General Code.*

COLUMBUS, OHIO, June 27, 1922.

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

GENTLEMEN:—Receipt is acknowledged of your recent communication which reads as follows:

“Senate Bill No. 14 (109 O. L. 12) provides that:

‘In each municipality where a municipal court is provided by law, the following fees, and no more, shall be taxed as part of the costs and be included in the judgment in all criminal proceedings.’

Section 1579-47 G. C., in relation to the municipal court at Cleveland provides that:

‘Except as otherwise provided for in this act, in actions and proceedings wherein the said municipal court has jurisdiction concurrent with a court of a justice of the peace, the fees and costs may be the same and taxed in the same manner as is now, or may hereafter be provided for actions and proceedings heard and determined in a court of a justice of the peace. In other actions and proceedings the fees and costs may be the same, and taxed in the same manner, as is now or may hereafter be, provided for actions and proceedings heard and determined in the court of common pleas. In criminal proceedings all fees and costs may be the same as now fixed in the police court of said city. Provided, however, that the municipal court, in lieu of the aforesaid methods of taxing costs, by rule of court may establish a schedule of fees and costs to be taxed in all actions and proceedings, in no case to exceed fees and costs provided for like actions and proceedings by general law.’

Question 1. Are the provisions of section 1579-47 G. C. (Cleveland Municipal Court act), conferring upon the court the authority to establish a schedule of fees and costs in criminal proceedings at a less amount than that fixed by Senate Bill No. 14, repealed?

Question 2. If it is held that said section 1579-47 G. C., is repealed by Senate Bill No. 14, should the fees and costs as set forth in sections 1746, 3014, 3014-1 and 3347 of the General Code be assessed in said municipal court of Cleveland, Ohio?”

Upon consideration of the section quoted it would seem evident that in criminal proceedings, the fees and costs of the municipal court of Cleveland are expressed to be the same "as now fixed in the police court of said city." The fees and costs taxable in city police court are indicated by sections 4579, 4580, 4481 and 4589 of the General Code, section 4581 G. C. providing that the police clerk shall receive the same fees as those allowed justices of the peace, while the fees of marshal, chief of police or other police officer of the municipality serving the writs or process of the court, are specified to be the same as those provided for constables in such cases. The general schedule of fees and costs taxable by justices of the peace and constables are provided by sections 1746 and 3347 of the General Code, and it may be noted that both of these sections are embraced within the provisions of Senate Bill No. 14, 109 O. L., p. 9, reference to which is made by your inquiry.

It is observed that section 1579-47, also provides in lieu of the aforesaid method of taxing costs, that the municipal court may by rule establish a schedule of fees and costs to be taxed in all actions and proceedings and which in no case may exceed fees and costs provided for like actions and proceedings by general law. Thus it may be generally stated, that two methods are prescribed by the section for the fixing of the fees and costs in criminal proceedings in the municipal court, the one regulated by the provisions of the General Code prescribing the fees and costs allowed justices of the peace and constables, and the other by rule or schedule as adopted by the municipal court.

Senate Bill No. 14 (109 O. L., p. 12), passed February 8, 1921, provides as follows:

"Section 1. In each municipality where a municipal court is provided by law, the following fees, and no more shall be taxed as part of the costs and be included in the judgment in all criminal proceedings.

FOR THE CLERK: The same fees provided for justices of the peace under section 1746 General Code.

FOR THE BAILIFF: The same fees provided for constable under section 3347 General Code.

FOR WITNESSES: The same fees provided under section 3014 General Code, and to be paid and accounted for in the manner provided therein.

FOR INTERPRETER: The same fees provided in section 3014-1 General Code, and to be paid and accounted for in the manner provided therein.

JURY FEES: The same as provided in section 12375 General Code, and to be accounted for in the manner provided therein.

Section 2. That all sections or part of sections in the special acts establishing such municipal courts, now in force, which are in conflict herewith be and the same are hereby repealed."

Examining and comparing the provisions of this recent act with those of section 1579-47 considered supra, it would seem at least in respect to the method provided by law for the taxing of fees and costs in criminal proceedings in the municipal court, the sections are not at variance, since in both cases the fees and costs in the final result are determinable from those sections of the law which provide for the fees and costs allowed justices of the peace and constables in criminal proceedings.

Consideration may now be directed to the method of taxing fees and costs by schedule as adopted by the municipal court as provided in the last paragraph of section 1579-47 G. C. and comparison had with the similar provisions of Senate Bill No. 14 above quoted. It would seem obvious that in the event the municipal court

should establish a schedule of fees similar in amounts to those prescribed by Senate Bill No. 14, there could be no conflict between the provisions of the two sections. On the other hand it is equally apparent that any schedule of fees adopted by the municipal court which provides for fees and costs differing in amount from those prescribed by said Senate Bill No. 14 must necessarily be in conflict with the terms of this latter enactment and in such an event and to such an extent the provisions of section 1579-47, permissive of the adoption of a fee schedule by such municipal court must be repealed by the latter statute, since Senate Bill No. 14 makes no provision for the optional fixing of a fee schedule by the municipal court, but clearly and specifically provides for the fees and costs to be taxed by municipal courts in criminal proceedings, the section concluding with the specific repeal of all sections or parts of sections in the special acts establishing such municipal courts which may be in conflict with the table of fees and costs therein provided.

It would seem then upon such considerations that an affirmative answer should be given to both of the questions propounded by your inquiry, since it is believed that the fees and costs in criminal proceedings in the municipal courts of Cleveland are now fixed by the provisions of Senate Bill 14, 109 O. L., p. 12, together with those of sections 1746, 3014, 3014-1, 3347 and 12375 of the General Code.

Respectfully,

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3272.

VILLAGES—SECTION 4219 G. C. SHOULD BE ADHERED TO BY VILLAGE COUNCILS IN FIXING COMPENSATION OF EMPLOYES UNDER SECTION 17 OF MILLER BILL (109 O. L. 4).

Section 4219 G. C. should be adhered to by village councils in fixing compensation of employes under section 17 of the Miller bill (109 O. L. 4):

COLUMBUS, OHIO, June 27, 1922.

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

GENTLEMEN:—Your recent communication reads:

“On March 1, 1922, you advised this department by letter that:

‘In my letter to your bureau dated January 24, 1922, the authority to set aside funds was discussed at some length. It was further indicated that section 4214 would be applicable to employments made by the city in pursuance of the provisions of section 17 of the Miller bill. Inasmuch as the provisions of sections 4214 and 4219 are very similar it is believed that the compensation must be fixed by council before a proper employment can be made of said section 17.’

On March 6, 1922, you advised this department by letter as follows:

‘In reply to your second inquiry as to whether attorneys, secret service officers and detectives can be paid a percentage of fines, it is believed that the manner in which payment is to be made is left to the discretion of council. It might provide a regular salary for the payment of such officers or a per diem compensation for the time actually employed, or if it chooses, it no doubt could fix a percentage basis.’