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CORPORATIONS—MAY NOT AMEND ARTICLES OF INCORPORATION TO PROVIDE FOR NEW CORPORATE PURPOSE IF CHAPTER OF REVISED CODE UNDER WHICH CORPORATION FORMED IS REPEALED—§§1731.01, 1701., 1702., R.C.—ART. XIII, SEC. 2, OHIO CONSTITUTION.

SYLLABUS:

1. Pursuant to the provisions of Sections 1907.031 and 2931.02, Revised Code, a judge of a county court may hear cases involving violations of ordinances of municipal corporations located within his area of jurisdiction.

2. Sections 1907.101, Revised Code, as a later expression of the legislature, takes precedence over Section 2931.08, Revised Code, and, under said Section 1907.101, a fine received by a county court for a violation of a municipal ordinance should be paid into the treasury of the municipal corporation whose ordinance was violated.

Columbus, Ohio, March 16, 1960

Hon. H. Dennis Dannley, Prosecuting Attorney
Medina County, Medina, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I have been asked to obtain an informal opinion from your office relative to the relationship of the jurisdiction of county courts and mayor’s courts as it relates to the county and to the city of Wadsworth.

“The only county court operating in our county is an area composed of Wadsworth Township, and located within the county court district is the City of Wadsworth. The question has arisen as to the jurisdiction of the county court and the mayor’s court in Wadsworth City in the hearing of misdemeanor cases under city ordinance. The City of Wadsworth has enacted, or is in the process of enacting, ordinances covering most common misdemeanors set up by statute and an ordinance conforming to the State Motor Vehicle Code. This apparently would then give the mayor’s court jurisdiction to hear misdemeanor cases under ordinances as per R. C. 1907.031.

“The question then arises whether the reference ‘to be exercised concurrently with the county court’ at the end of the first paragraph of R. C. 1907.031 applies to all jurisdiction of Mayor’s

court or only to 'moving traffic violations occurring on State Highways located within their respective municipal corporations?' Do you think concurrent jurisdiction of the county court extend to all cases wherein the mayor's court would have jurisdiction or only to the limited cases of moving traffic violations within the City?

"As bearing on that question, consideration of R.C. 1905.20 providing for designation of county court judge to perform mayor's duties in criminal matters in event of absence or disability of the mayor seems to suggest the interpretation that concurrent jurisdiction is restricted to moving traffic violations. If there was concurrent jurisdiction in all ordinance cases, the county court would have the powers set forth in R.C. 1905.20, with the possible exception of suppressing disorder without any designation by the Mayor.

"Finally, the provisions of R.C. 1907.101 and R.C. 2931.08 relative to the disbursements of fines collected by a County Court pose an additional question. R.C. 2931.08, effective January 1, 1958, and not amended by last session of legislature, provides that fines collected by a County Court shall be paid into the County Treasury. R.C. 1907.101, Section C. effective November 6, 1959, suggests the reasonable interpretation of fines for municipal ordinance violations being paid to the municipality and state law violations being paid to the County. However, the wording of this section, particularly when viewed in light of R.C. 2931.08, suggest the possibility of a different interpretation. Also, the question of the disbursements of forfeitures of bond posted in County Court for violations of municipal ordinances suggests another problem."

As the question to decide is whether a judge of a county court has jurisdiction to hear cases involving violations of ordinances of a municipal corporation, the answer depends on the statutory provisions pertaining to the criminal jurisdiction of a county court. In this regard, Section 2931.-02, Revised Code, provides in part :

"A judge of a county court is a conservator of the peace and has jurisdiction *in criminal cases* throughout his area of jurisdiction. * * *" (Emphasis added)

Section 1907.031, Revised Code, referred to in your letter, reads as follows :

"As of the effective date of this section, the jurisdiction of mayors to hear and determine prosecution for felonies or misdemeanors, terminates within the county court district. *Thereafter, mayors within the district may retain such jurisdiction as is now provided in all criminal causes involving violation of ordinances of*

their respective municipal corporations and in all criminal causes involving moving traffic violations occurring on state highways located within their respective municipal corporations, to be exercised concurrently with the county court.

“All causes, judgments, executions, and proceedings then pending in mayors’ courts to which their jurisdiction is terminated shall proceed in the county court as if originally instituted therein. The parties may make such amendments to their pleadings as are required to conform to the rules of the county court.

“In all cases over which the county court is given exclusive jurisdiction, the pleadings, orders, entries, dockets, bonds, papers, records, books, exhibits, files, moneys, property, and persons belonging to, or in the possession of, or subject to the jurisdiction of the mayors’ courts within the county court district shall be transferred by the custodian thereof to the county court.” (Emphasis added)

The above-noted sections of law appear to be the only provisions dealing with the criminal jurisdiction of a judge of the county court. Section 2931.02, *supra*, does not refer to ordinances specifically but deals with “criminal cases.” Section 1907.031, Revised Code, does refer to ordinances but you raise the question as to whether the particular language used is sufficient to give a county court jurisdiction over ordinance cases.

Section 1907.031, Revised Code, deals with the jurisdiction of mayors’ courts in county court districts. It indirectly deals with the jurisdiction of county courts, however, in the use of the words “to be exercised concurrently with the county court.” Referring to the emphasized language of Section 1907.031, *supra*, it appears that the phrase “, to be exercised concurrently with the county court” applies to all actions specified in the sentence; the use of the comma before the phrase indicating that such phrase is intended to modify the entire sentence rather than just the words “in all criminal causes involving moving traffic violations occurring on state highways located within their respective municipal corporations.” It will further be noted that the language in question is similar to that of Section 1901.04, Revised Code, dealing with the effect of the institution of a municipal court, which courts are definitely authorized to hear cases involving violations of ordinances (See Section 1901.20, Revised Code). Section 1907.031, *supra*, therefore, at least implies that county courts have jurisdiction to hear municipal ordinance cases.

As noted above, Section 2931.02, Revised Code, does not specifically give a judge of a county court jurisdiction over cases involving violations

of municipal ordinances but refers generally to “criminal cases.” Whether “criminal cases” includes ordinance violation cases does not appear to have been decided by any court although the question as then pertaining to the jurisdiction of a justice of the peace was considered by one of my predecessors in Opinion No. 3299. Opinions of the Attorney General for 1953, page 677, the syllabus reading :

“A justice of the peace does not have jurisdiction to hear cases involving violations of an ordinance of a village which lies within the township in which he is elected.”

Opinion No. 3299, *supra*, interpreted the words of Section 2931.02, Revised Code, as then existing, reading :

“A justice of the peace is a conservator of the peace and has jurisdiction in criminal cases throughout the township in which he is elected and where he resides, * * *.”

The opinion noted that municipal courts and police courts were expressly empowered to hear and determine ordinance cases as well as misdemeanor cases and that the lack of such express authority for a justice of the peace implied a lack of authority to hear ordinance cases. It was also noted that Section 2931.08, Revised Code, required that fines collected by a justice of the peace be paid into the general fund of the county and that there was no provision for a justice to pay fines into a village or city treasury.

In applying the reasoning of Opinion No. 3299, *supra*, to the instant case, it is noted that justices of the peace have been replaced by judges of county courts, that both municipal courts and police courts do have express authorization to hear municipal ordinance cases (See Sections 1901.20 and 1903.06, Revised Code), and that Section 2931.08, Revised Code, provides that fines collected by a judge of a county court shall be paid into the general fund of the county. On the other hand, Section 1907.031, *supra*, at least implies that a judge of a county court has jurisdiction over municipal ordinance cases and Section 1907.101, Revised Code, relating to the procedure in county courts, provides for payment of fines in ordinance cases to the municipal corporations concerned, thereby raising the assumption that county courts may hear municipal ordinance cases. On this point, said Section 1907.101, reads in part :

“* * *

“(C) The clerk of a county court shall receive and collect all costs, fees, fines, penalties, bail, and other moneys payable to the office or to any officer of the court and issue receipts therefor, and shall each month disburse the same to the proper persons or officers and take receipts therefor, *provided that fines received for violation of municipal ordinances shall be paid into the treasury of the municipal corporation whose ordinance was violated and to the county treasury all fines collected for the violation of state laws, subject to sections 3375.50 and 3375.53 of the Revised Code.* Moneys deposited as security for costs shall be retained pending the litigation. He shall keep a separate account of all receipts and disbursements in civil and criminal cases, which shall be a permanent public record of the office, as required by the bureau of inspection and supervision of public offices, and on the expiration of his term such records shall be delivered to his successor. He shall have other powers and duties as are prescribed by rule of the court.

“* * *”

(Emphasis added)

Regarding the payment of fines collected by a county court it should be noted that Section 1907.101, *supra*, was enacted by Amended House Bill No. 571 of the 103rd General Assembly, effective November 9, 1959, while Section 2931.08, *supra*, became effective so far as county courts are concerned on January 1, 1958 (Amended House Bill No. 937 of the 102nd General Assembly, 1957). The general rule is that where two statutes contain repugnant provisions the latest expression of the legislature will govern (State, v. Lathrop, 93 Ohio St., 79 (85); 37 Ohio Jurisprudence, Section 135, pages 396, 397). Accordingly, the provisions of Section 1907.101, *supra*, as pertaining to the payment by the county court of fines collected by such court take precedence over the provisions of Section 2931.08, *supra*, in that regard.

In conclusion, it appears that while Section 2931.02, Revised Code, does not expressly authorize a county court judge to hear municipal ordinance cases, such authority is implied by the reference in said section to “criminal cases” when read together with Sections 1907.031 and 1907.101, Revised Code, and it is my opinion that the legislature intended such a construction in the 1959 legislation affecting such sections.

Accordingly, answering your specific question, it is my opinion and you are advised:

1. Pursuant to the provisions of Sections 1907.031 and 2931.02, Revised Code, a judge of a county court may hear cases involving viola-

tions of ordinances of municipal corporations located within his area of jurisdiction.

2. Section 1907.101, Revised Code, as a later expression of the legislature, takes precedence over Section 2931.08, Revised Code, and, under said Section 1907.101, a fine received by a county court for a violation of a municipal ordinance should be paid into the treasury of the municipal corporation whose ordinance was violated.

Respectfully,

MARK MCELROY
Attorney General