

2307.

FEES IN ORDINANCE CASES—CHIEF OF POLICE IS ENTITLED TO EXPENSES UNDER PROVISION OF SECTION 3017 G. C.

SYLLABUS:

1. *A chief of police of a city, who is entitled to fees in state cases but not entitled to fees in ordinance cases, is to be paid his expenses in ordinance cases, for arrests and commitments, from the city treasury, under the provisions of section, 3017 General Code.*

2. *Council of a city cannot pass an ordinance allowing a chief of police to retain his fees in ordinance cases, because sections 4213 and 4270 General Code, prohibit same.*

COLUMBUS, OHIO, March 23, 1925.

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

GENTLEMEN:—This will acknowledge receipt of your letter of March 11, 1925, as follows:

“The syllabus of Opinion 2140 of January 12, 1925, reads:

‘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.’

“This opinion is premised on the decision of the supreme court in the case of *State ex rel. Nead vs. Nolte*, No. 10551, decided December 16, 1924, and *Portsmouth vs. Milstead*, 8 O. C. C. (n. s.) 114, affirmed by the supreme court without report, 76 Ohio St. 597.

“In the *Milstead* case it was held that the provisions of section 1536-633 (known as section 126 of the Municipal Code), now section 4213 General Code, had reference to municipal fees solely and that the section quoted did not authorize cities to interfere with the fees of mayors, or chiefs of police in state criminal cases.

“The bureau has instructed its examiners that chiefs of police and other police officers are entitled to fees in state cases and that such officers of cities are not entitled to fees in ordinance cases. These instructions have made necessary the determination of the following questions:

“Question 1. Is the chief of police of a city, who is entitled to fees in state cases but who is not entitled to fees in ordinance cases, to be paid his expenses in ordinance cases out of the city treasury?

“In this connection, we are calling your attention to section 3017 General Code, as amended, 109 O. L. 173.

“Question 2. Would it be proper for the council of a city to provide that the mayor, chief of police or other police officers thereof, are entitled to fees in ordinance cases?”

Section 3017 General Code, 109 Ohio Laws, page 173, reads as follows:

“In all state cases any wholly salaried minor court officer charged with the execution of a warrant to arrest or order of commitment shall receive from the county treasury the actual necessary expense of executing such writs upon specifically itemized bills, verified by his oath, and certified to by the proper magistrate, court or clerk thereof, and in like manner such ex-

pense shall be paid from the municipal treasury when incurred in ordinance cases."

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 4270 General Code is as follows :

"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 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."

Section 4213 General Code, says salaries shall not be raised or decreased during the term, and "*except as otherwise provided in this title*, all fees pertaining to any office shall be paid into the city treasury."

Sections 4213 and 4270 General Code, are under this title, which is "Municipal Corporations."

Section 4270 General Code, says definitely that "*All fees* collected by the mayor \* \* \* due a chief of police \* \* \* shall be by him paid into the treasury of the municipality," and provides no exception in favor of a chief of police, as it does in favor of mayors and marshals, nor is there any other section which excepts the fees of a chief of police from the provisions of sections 4213 and 4270.

Section 4214 General Code reads :

"Except as otherwise provided in this title, council, by ordinance or resolution, shall determine the number of officers, clerks and employes in each department of the city government, and shall fix by ordinance or resolution their respective salaries and compensation, and the amount of bond to be given for each officer, clerk or employe in each department of the government, if any be required. Such bond shall be made by such officer, clerk or employe, with surety subject to the approval of the mayor."

The chief of police is under civil service and it has been held that the provisions of section 4213 General Code, do not apply to them in so far as increase of salaries is concerned.

Therefore the *salary* of a chief of police could be increased at any time there was money for its payment.

Section 4214, General Code, uses the words "*salaries and compensation*," and it were not for the inhibition of section 4213 and 4270 council might perhaps allow a chief of police to retain his fees as compensation in addition to his salary; but in view of the inhibitions in these sections and in view of the holding in the case of *Struthers vs. Sokol*, No. 17776 in our supreme court, the second syllabus of which reads:

"In determining whether an ordinance is in conflict with the general laws, the test is whether the ordinance '*permits or licenses that which the statute forbids or prohibits*,' and vice versa,"

I am of the opinion that an ordinance permitting the chief of police to keep his fees in ordinance cases would be prohibited. And this seems to have been the holding of this department heretofore, for in Opinions of the Attorney General for 1914, Vol. 2, page 1246, I find the following syllabus:

"Policemen, which likewise include chief of police, are permitted to retain fees received for service in state cases. The rule is otherwise relative to ordinance cases by reason of section 4213 General Code."

In the Nolte case, the supreme court said:

"As to all ordinance cases, the fees taxed in favor of a mayor or marshal must be paid into the village or city treasury."

Hence, a chief of police would be a wholly salaried officer, as far as his fees under ordinances are concerned, and would be entitled to his expenses from the city treasury, as provided in section 3017, General Code.

Respectfully,

C. C. CRABBE,

*Attorney General.*

2308.

AUTHORITY OF BOARD OF HEALTH TO ADOPT RULES AND REGULATIONS DISCUSSED—SECTION 1261-42 CONSTRUED.

SYLLABUS:

- *Whether or not a board of health is justified in making regulations under the provisions of section 1261-42, requiring the muzzling of dogs, and the killing thereof when not muzzled, to prevent the spread of rabies, is a question of fact to be determined in the first instance by the board of health. Under such circumstances such a regulation will not be disturbed unless in a proper judicial proceeding the court has found the same to be an abuse of the power and discretion of the board.*

COLUMBUS, OHIO, March 23, 1925.

HON. BRITTON S. JOHNSON, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of recent date in which you request my opinion on the following: