

compliance with the provisions of section 2288-2, General Code, and upon the considerations above noted this lease is hereby approved and the same returned to you.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1207.

JURORS — WITNESSES — FEES — WHERE STATE CASES TRIED IN CITY POLICE COURT—WHERE BY RULE OF COURT JURORS LIMITED TO ELECTORS OF CITY—FEES PAID FROM COUNTY TREASURY.

SYLLABUS:

The fees of jurors and witnesses in state cases which are tried in a city police court, where by rule of court the jurors are limited to electors of the city, must be paid from the county treasury as provided in Sections 4579 and 4580, General Code.

COLUMBUS, OHIO, September 20, 1937.

HON. WILLIAM M. SUMMERS, *Prosecuting Attorney, Marietta, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent communication requesting an opinion in regard to the following facts:

* * * * *

Is a county obligated under the law to pay the fees of witnesses and jurors in a state case tried in Police Court where by rule of Court the jury panel is drawn entirely within a municipal corporation involved?

* * * * *

It is a matter of practice of the Police Court in Marietta to prosecute under a City ordinance in uncontested cases and where a fine is to be paid by the Defendant. In contested cases where a jury is demanded and in cases where a jail sentence seems probable, prosecution is made under a state case. It is obvious from these facts that the county is receiving no benefit financially from the payment of fines in the Marietta Police Court and my County Auditor is reluctant, therefore, to allow the payment of fees of witnesses and jurors out of county money, particularly where by rule of Court residents

of the county, outside of the municipal corporation of Marietta are precluded from serving on juries.

* * *

* * *

* * *

Sections 4579 and 4580 of the General Code, also quoted in your letter, read as follows:

SECTION 4579.

“The police court shall have power to compel the attendance of witnesses, jurors, and parties. Jurors shall have the qualifications and be subject to the challenges of those in court of common pleas in like cases. They shall be selected, summoned and impaneled in accordance with an ordinance of the council, or if no such ordinance is in force, *in accordance with a rule of the court*. They shall receive the same fees as are allowed jurors in the court of a justice of the peace in criminal cases, *which shall be paid from the county treasury in state cases, and the city treasury in cases for the violation of ordinances*, upon the certificate of the court or clerk thereof.” (Italics, Mine.)

SECTION 4580.

“Witnesses in the police court shall be allowed the same fees as are allowed before justices of the peace in criminal cases. *In ordinance cases said fees shall be paid from the city treasury and in state cases they shall be paid from the county treasury upon the certificate of the court or clerk thereof.*” (Italics, Mine.)

These sections set forth the provisions as to payment of fees for jurors and witnesses in police court in language so clear and unambiguous that no case for construction or clarification, as to what was intended by the Legislature, is presented. Moreover, the language used in those clauses which specifically provide for payment is lucidly mandatory and so precise that there can be no argument against its apparent meaning. (See parts above underscored.)

The only matter to be determined is whether the action is a state case involving violation of a state statute or whether the action is a municipal case involving violation of an ordinance. Once this matter is determined, then the express provisions of the law must be followed, and the fact that jurors may be drawn from only one portion of a county or that the county does not receive financial benefit from fines and penalties assessed does not alter the provisions of the statute.

In regard to the question of conflict between the rules of the Mar-

ietta Police Court and the Ohio Constitution, may I refer to the following paragraphs from Corpus Juris, Vol. 35, page 238, par. 166.

“The legislature may create judicial districts comprising less than the whole county and provide that the jury be selected from that portion of the county only over which the court has jurisdiction * * or that the jury for city courts shall be summoned from the city and not from the whole body of the county.”

Section 4575 of the General Code provides for the rules of police courts.

“The judge shall adopt such rules of practice and procedure as will give each party a proper statement of any charge against him and a full opportunity of being heard, which rules shall be placed in the court room.”

Rules 1 and 4 taken from the rules of the Police Court of the City of Marietta read as follows:

“RULE 1. The judge of said Police Court shall, upon the fact being made known to him, that a jury trial is necessary, prepare a panel containing the names of twenty-four (24) individuals, who are citizens and electors of the City of Marietta, Ohio.”

“RULE 4. The jurors so selected shall have the qualifications and be subject to the challenge of those in Court of Common pleas in like cases; and if from challenge or other cause, the panel shall not be full, the Chief of Police of the City of Marietta shall fill the same in the same manner as it is done by the Sheriff in the Court of Common Pleas.”

The tenth section of Article I of the Ohio Constitution provides in part:

“In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial *by an impartial jury of the county* in which the offense is alleged to have been committed;” (Italics yours).

We now come to the decision as to whether or not the Court rules in question are a violation of Article I, section 10, *supra*. It is rather a general practice to limit the drawing of jurors for service in the police court of a city to city limits. The constitutionality of this practice was passed upon by the Supreme Court, in *State vs. Fendrick* (77 O.S. 298). In this case, the police court of a city exercising its jurisdiction to try persons charged with misdemeanors committed within four miles of the city limits drew the jury wholly from within the city limits. The jury array was challenged. The court in rendering its opinion, discussed the constitutionality and effect of the jury selection in relation to the provisions of Section 10, Article I, which then provided for a "speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed". The following paragraph appears in the opinion of the Fendrick case.

"The only provision of the constitution appearing to have any relation whatever to the subject is that of the tenth section of the first article, that the party accused shall have 'a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.' The primary purpose of this provision is to fix the place of trial. All that is required as to the jury is that it shall be impartial. As to the place of trial, the substance of the right conferred is that 'it shall be in the county or so near thereto that the accused may have the benefit of his own reputation and that of his witnesses, and that he may, with as much certainty and as little expense and delay as are practicable, secure the attendance of his witnesses.'"

I believe this opinion applies to the matter before us, though the constitutional provision has been changed so that it now reads "impartial jury of the county in which the offense is alleged to have been committed" (see Section 10, Article I, *supra*). It appears that the court rules in question make adequate provision for the selection of an impartial jury.

In specific answer to your inquiry, therefore, it is my opinion that the fees of jurors and witnesses in state cases which are tried in a city police court, where by rule of court the jury is limited to electors of the city, must be paid from the county treasury as provided in Sections 4579 and 4580, General Code.

Respectfully,

HERBERT S. DUFFY,

Attorney General.