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MUNICIPAL COURT—CITY OF CLEVELAND—PROVISIONS OF SECTION 1579-41 G. C. PREVAIL OVER PROVISIONS OF SECTION 3056 G. C.—CLERK OF SUCH COURT AUTHORIZED AND REQUIRED TO PAY TO COUNTY LAW LIBRARY ASSOCIATION IN ACCORDANCE WITH PROVISIONS OF SECTION 1579-41 G. C.

SYLLABUS:

The provisions of Section 1579-41 of the General Code, being part of the act creating and defining the powers of the Municipal Court of the City of Cleveland, prevail over the provisions of Section 3056, General Code, and the Clerk of the Municipal Court of Cleveland is authorized and required to pay to the county law library association in accordance with the provisions of said Section 1579-41 General Code.

Columbus, Ohio, September 12, 1945

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

Gentlemen :

I have before me your communication requesting my opinion and reading as follows:

“We are inclosing herewith a letter from our Chief Examiner in the City of Cleveland, showing that Section 1579-41, General Code, was reenacted to become effective September 6,

1939. Said section provides that the Cleveland Municipal Court shall pay the County Law Library Association annually, the sum of \$600.00.

Section 3056 et seq. of the General Code, as amended, became effective August 31, 1939. There is a conflict in said sections relative to the annual amount of money that shall be paid by the municipal court to the Law Library Association; also, said Section 1579-41, G. C., conflicts with a number of other specific sections of law concerning the disposition of fines and penalties collected by said court in specific statutory cases.

In view of the fact that amended Section 1579-41, G. C., is a later enactment than either Section 3056 or many of the other special sections governing the disposition of collections by municipal courts, may we request your opinion as to the proper interpretation of the law that should govern the clerk of the Cleveland Municipal Court in the distribution of moneys coming into his hands as collections of fines and penalties in the Criminal Division of the Court."

The question which you raise has been before the courts of this State several times, and so far as I can find it has been the uniform holding that the provisions of a special act creating a municipal court will prevail over the provisions of Section 3056 of the General Code. Thus, it was held in case of State of Ohio, ex rel. vs. Henry, 23 O. C. C. (N. S.) 541:

"1. Where two statutes are irreconcilable the one last enacted must prevail, and where there is a conflict between a general law and a special act the special act will prevail.

2. Section 3056, General Code, giving to law library associations fines and penalties collected in police courts in certain cases, does not give to such associations the fines and penalties collected in those cases in a municipal court, which has been created by special act, and to which jurisdiction of all cases formerly exercised by police courts has been transferred, where the act creating the municipal court expressly directs the clerk of that court to pay all moneys collected to the city treasurer."

In the opinion the emphasis seems to be placed on the proposition that the municipal court act was a special act and therefore should prevail over the general law, and little attention was given to the fact that the special act was later in its enactment than Section 3056 of the General Code.

Again, in the case of *State, ex rel. v. Welker*, 47 Oh. App. 42, it was held :

“1. Special act conflicting with general law will prevail.

2. General statute, requiring municipal court clerks to pay fines and penalties collected to county law library associations, is inapplicable to municipal court created by special act containing conflicting provisions.”

It appears in that case that Section 3056, as it then stood, became effective July 24, 1931, and that the municipal court act in question became effective eleven days later. The court, after pointing out the respects in which the two acts were inconsistent in the requirements as to payments to the county law library association, said :

“It has been held that where there is a conflict between a general law and a special act, the special act will prevail, and that the provisions of Section 3056 are not applicable to a municipal court created in a special act where such act contains conflicting provisions. *State, ex rel. Cleveland Law Library Assn., v. Henry, Clerk of Court*, 34 C. D., 371, 23 C. C. (N. S.), 541.”

Even where a general law which is inconsistent with a special statute on the same subject was enacted later than the special act, the special act will control.

As stated in 59 *Corpus Juris*, p. 1056 :

“Where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy ; but to the extent of any necessary repugnancy between them, the special statute, or the one dealing with the common subject matter in a minute way, will prevail over the general statute, unless it appears that the legislature intended to make the general act controlling ; and this is true a fortiori when the special act is later in point of time, although the rule is applicable without regard to the respective dates of passage.”

In an opinion rendered by one of my predecessors, found in 1938 *Opinions Attorney General*, p. 258, it was held :

“The express provisions of Section 1579-1065a, General Code (effective July 26, 1929), requiring the Clerk of the Paines-

ville Municipal Court to pay to the Lake County Law Library Association a certain definite amount of money from all costs, fines and penalties collected by him for the benefit of the county, must be given effect over the provisions of Section 3056, General Code, (effective as amended July 24, 1931) and which is a general statute containing such provisions for payment to the county law library association by the clerks of municipal courts of fines and penalties that are in conflict with the provisions of Section 1579-1065a, General Code."

It will be noted from the statement of the above quoted syllabus that the amendment of Section 3056 became effective two years after the enactment of the special act creating the Painesville Municipal Court; nevertheless, the provisions of the municipal court act were held to override the general provisions of such Section 3056.

There is a provision in Section 1579-41, General Code, relating to the duties of the clerk of the Municipal Court of Cleveland, which requires some special attention. That section reads in part:

"The clerk of the municipal court shall have general powers to administer oaths, and take affidavits, and to issue executions upon any judgment rendered in the municipal court, including a judgment for unpaid costs; he shall have power to issue and sign all writs, process and papers issuing out of the court, and to attach the seal of the court thereto; and except as hereinafter provided, shall have power to approve all bonds, recognizances and undertakings fixed by any judge of the court or by law: * * * He shall pay over to the proper parties all moneys received by him as clerk; he shall receive and collect all costs, fines and penalties, and shall pay therefrom annually six hundred dollars in quarterly installments to the trustees of the law library association *as provided for in division IV, chapter 1 of the General Code*, and shall pay the balance thereof quarterly to the treasurer of the city of Cleveland and take proper receipts therefor, * * *."

(Emphasis added.)

Chapter 1 of Division IV here referred to, embraces Sections 3054 to 3058 inclusive, of the General Code, covering the entire subject of contributions from various sources to the support of county law library associations. The provision emphasized in the above quotation from Section 1579-41 might suggest an intention on the part of the General Assembly to make Section 3056, General Code, controlling as to the amount of the payment. However, a provision in substantially identical language was

contained in Section 1579-1359 of the municipal court act which the court was considering in *State, ex rel. v. Welker, supra*, and Judge Guernsey, speaking for the court, said that only such part of Chapter 1, Division IV is applicable to the provisions of Section 1579-1359 as is not in conflict with the express provisions of that section. The opinion proceeds:

“Or, in other words, that the provisions of said Chapter I apply in so far as they require that the law library association which receives such funds shall be one which furnishes to all the county officers and the judges of the several courts in the county admission to its library and the use of its books free of charge, etc.”

It is therefore my opinion in specific answer to your question, that the provisions of Section 1579-41 of the General Code, being part of the act creating and defining the powers of the Municipal Court of the City of Cleveland prevail over the provisions of Section 3056, General Code, and that the Clerk of the Municipal Court of Cleveland is authorized and required to pay to the county law library association in accordance with the provisions of said Section 1579-41.

Respectfully,

HUGH S. JENKINS

Attorney General