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COURT DEPOSIT OF MUNICIPAL CORPORATION—SUBJECT TO CLERK OF COURTS' COMMISSION—§§719.15, 2303.20, R.C.

SYLLABUS:

A deposit by a municipal corporation by order of court, in compliance with Section 719.15, Revised Code, is subject to the commission due the clerk of courts under the provisions of Section 2303.20, Revised Code, and is payable by the municipal corporation making such deposit.

Columbus, Ohio, July 14, 1959

Hon. Mathias H. Heck, Prosecuting Attorney
Montgomery County, Dayton, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

"The City of Dayton, in carrying out its Urban Renewal Program, is commencing to file a considerable number of appropriation cases in the Montgomery County Common Pleas Court in accordance with Chapter 719 R.C.O., Sections 719.12 and 719.15 R.C.O. allow the Court in certain instances to require the municipality to deposit with the Clerk of Courts, the amount of compensation awarded for the property taken.

"Section 2303.20 R.C.O. provides in part as follows:

"The Clerk of the Court of Common Pleas shall charge the following fees and no more:

(K) A commission of one per cent on the first one thousand dollars and one-fourth per cent on all exceeding one thousand dollars for receiving and disbursing money, other than costs and fees, paid to such clerks in pursuance of an order of court or on judgments, and which has not been collected by the sheriff or other proper officer on order of execution, to be taxed against the party charged with the payment of such money.'

"Section 719.18 R.C.O. provides in part as follows:

"The costs of the inquiry and assessment in appropriation proceedings under Sections 719.01 to 719.21, inclusive of the R.C., shall be paid by the municipal corporation; all other costs, which shall include jury fees, shall be taxed as the Court directs * * *

"The question has arisen as to whether the Clerk of Courts is permitted to tax the commission allowed to him by Section 2303.20 (K) R.C.O. against the City of Dayton (appropriator) when the Court orders the compensation assessed by the jury to be deposited with Clerk of Courts, or whether this commission should be assessed against the owner whose property is taken in the absence of an order of the Court. It is the contention of the City of Dayton that in appropriation proceedings it is governed by a specific chapter of the code, *i.e.* Chapter 719 R.C.O.; that Section 719.18 R.C.O. requires only that the cost of the inquiry and assessment in appropriations proceedings shall be paid by them and that all other costs shall be taxed as the Court directs, and that therefore the Clerk of Courts, unless the Court directs otherwise, has no authority to charge the commission provided for by Section 2303.20 (K) against the City of Dayton.

"In view of the fact that this matter has state-wide interest, the Montgomery County Clerk of Courts has requested our office to secure your opinion on the following question:

"'When a municipality institutes appropriation proceedings under the authority of Chapter 719 R.C.O. and the Court orders the compensation assessed by the jury to be deposited with Clerk of Courts as authorized by Sections 719.12 and 719.15 R.C.O., does the Clerk of Courts have authority to charge the commission provided for in Section 2303.20 (K) against the municipality appropriating the property?'"

The part of Section 719.18, Revised Code, as set forth in your letter requires the municipal corporation to pay costs of inquiry and assessment for proceedings under Chapter 719., Revised Code.

The unquoted portion of Section 719.18, Revised Code, reads as follows:

"* * * At or after the time of making the application for appropriation under section 719.06 of the Revised Code, such municipal corporation may offer to confess judgment for an amount to be stated, and the costs then made, in favor of any owner, who in any manner enters appearance, or upon whom or whose agent personal service may be made. If such owner refuses to accept such offer, and on the trial does not recover more, he shall pay all costs accruing after the offer. An offer so made shall be governed by the statutes for an offer to confess judgment."

The words "and all other costs shall be made as the court directs" appearing in the first sentence of Section 719.18, Revised Code, must be in such form so as to coincide with the next sentence in the part of the section just quoted.

Paragraph (K) of Section 2303.20, Revised Code, also quoted in your letter, provides for a "*commission*" to the clerk for receiving and disbursing money, "*other than costs and fees*," to be paid to the clerk in pursuance of an order of the court, or, on judgments to be taxed against the party charged with the payment of such money. In your request you state the assessment of the jury has been deposited with the clerk upon order of the court. (Such order is authorized by Section 719.15, Revised Code).

It appears to me that the provisions of Sections 719.18 and 2303.20, Revised Code, must each be followed in an appropriation case such as the instant case. Thus, the commission provided for in Section 2303.20, Revised Code, is payable even though the municipal corporation is required to pay costs under the provisions of Section 719.18, Revised Code. In this regard, it was stated in Opinion No. 2190, Opinions of the Attorney General for the year 1952, page 812, addressed to the Director of Highways concerning appropriation of property for highway uses:

"It is my opinion that the total amount paid to the clerk pursuant to an order of court, made after settlement or final verdict, is subject to the commission provided by Section 2901."

(Reference is made to Section 2901, General Code, now Section 2303.20, Revised Code.)

Accordingly it is my opinion and you are advised that a deposit by a municipal corporation by order of court, in compliance with Section 719.15, Revised Code, is subject to the commission due the clerk of courts under the provisions of Section 2303.20, Revised Code, and is payable by the municipal corporation making such deposit.

Respectfully,
MARK McELROY
Attorney General