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1. MUNICIPAL COURTS—COMPENSATION OF JUDGES AND CLERKS—AMOUNTS PAYABLE MONTHLY TO COUNTY LAW LIBRARY ASSOCIATION — SECTIONS 1591, 1610, 3056 GC.
2. AUTHORITY OF MUNICIPAL COURT—SECTION 11728 GC DOES NOT LIMIT ESTABLISHMENT OF SCHEDULE FEES AND COSTS AUTHORIZED IN SECTION 1605 GC—OPINION 820 OAG 1939, PAGE 93, DISTINGUISHED.

SYLLABUS:

1. The compensation of judges and clerks of municipal courts for which provision is made in Sections 1591 and 1610, General Code, should be taken into account in the determination, as provided in Section 3056, General Code, of the amounts payable monthly to a county law library association.

2. The provisions of Section 11728, General Code, do not limit the authority of a municipal court to establish a schedule of fees and costs as authorized in Section 1605, General Code. Opinion No. 82, Opinions of the Attorney General for 1939, p. 93, distinguished.

Columbus, Ohio, April 2, 1953

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

“Two questions have arisen in connection with the examination of the accounts and records of the Municipal Court of Z., Ohio.

“Section 3056 of the General Code provides in part as follows:

“‘All monies collected by a municipal corporation, accruing from fines, penalties, forfeited deposits or forfeited bail bonds or forfeited recognizances taken for appearances by a municipal court, police court or mayor’s court for offenses and misdemeanors brought for prosecution in the name of a municipality under a penal ordinance thereof, where there is in force a state statute under which the offense might be prosecuted, or prosecuted in the name of the state, *except a portion thereof, which plus all costs collected monthly in such state cases, equals the compensation allowed by county commissioners to the judges of the municipal*

*court presiding in police court, clerk and prosecuting attorney of such court in state cases, shall be retained by the clerk of such municipal, police or mayor's court, and be paid by him forthwith each month to the trustees of such law library association in the county in which such municipal corporation is located * * *.*

"Under the provisions of the above quoted section, it has been the practice to deduct the amount of the compensation *allowed* to the police judges, the clerk and the prosecuting attorney by the county commissioners, from the amount of the costs, fines and forfeitures collected in ordinary state cases, each month, and to remit the balance of the ordinary state fines and forfeitures to the law library association, each month, until the full amount allotted by the county auditor has been paid.

"Section 1591 of the General Code, effective on January 1, 1952 (Municipal Court Act), provides, in part, as follows:

"The compensation of municipal judges shall be paid in semi-monthly installments, three-fifths of said amount being payable from the city treasury and two-fifths of such amount being payable from the treasury of the county in which such city is located.'

"Section 1610 of the General Code provides, in part, as follows, referring to the compensation of the municipal court clerk:

"Such compensation shall be payable, in semi-monthly installments, from the same sources and in the same manner as provided in Section 1591 of the General Code.'

"Section 1613 provides that the city solicitor, city attorney or director of law, acting as prosecutor in the municipal court, or his assistants, shall receive for such services additional compensation as the board of county commissioners may prescribe to be paid from the county treasury.

"The question in this connection is as follows:

"Shall the Clerk of the Municipal Court, before making payment of ordinary state fines and forfeitures, each month, to the law library association, deduct the total of the monthly salaries paid by the county to the police judges, the clerk of court and police prosecutor, and remit same to the county treasurer to reimburse the county, before paying any amount of ordinary state fines and forfeitures to the law library association, or should the clerk of the court remit the entire amount of the fines and forfeitures in ordinary state cases, each month, without making any deduction for the monthly salaries of the police judges, the clerk of court and the police prosecutor?

"It will be noted that the county commissioners were previously allowed to pay part of the salaries of these officers of the

municipal court, but now they are *required* to pay two-fifths of the salaries of the police judges and the clerk of court, and may pay part of the salary of the police prosecutor.

“The second question pertains to fees chargeable by the clerk of court in trusteeship cases.

“Under the provisions of Section 11728-1 of the General Code, it has been held that the clerk of the municipal court is limited to a charge of two per cent of the amount paid in on each trusteeship, as fees of the court for handling such trusteeships.

“Under the provisions of Section 1605 of the General Code, Section (A), the municipal court, by rule, may establish a schedule of fees and costs to be taxed *in any action or proceeding*, either civil or criminal, which in no case shall exceed the fees and costs provided by law for a similar action or proceeding in the court of common pleas.

“Under the provisions of this section 1605, General Code, the court in Z. has established a fee of \$7.50 for the original filing of a trustee account, and also charges two per cent of all moneys handled, which is computed and charged each time distributions are made to the various creditors.

“The question that arises, in this connection, is as follows :

“Under the provisions of Section 1605, General Code, can the Municipal Court of Z. collect the \$7.50 schedule of costs upon the filing of a trusteeship account in such court, and in addition thereto charge the two percent of monies handled in the account, provided for by Section 11728-1 ?

“Your consideration of these two questions involving the operation of the new Municipal Court Act will be greatly appreciated.”

In your inquiry you have quoted the initial portion of the first paragraph of Section 3058, General Code. Because this paragraph is couched in somewhat awkward language, it is somewhat ambiguous unless examined in its entirety. Accordingly we may note that this paragraph continues in the following language :

“* * * but the sum so retained and paid by the clerk of said municipal, police, or mayor's court to the trustees of such law library association shall in no month be less than 25% of the monies arising from such fines, penalties, and forfeited deposits, forfeited bail bonds and forfeited recognizances, taken for appearances, in that month, without deducting the amount of the allowance of the county commissioners to said judge, clerk and prosecutor.”

It will be seen that this paragraph consists of a single long and involved sentence the meaning of which is not readily clear. Nevertheless, by considering this paragraph in its entirety it becomes possible to ascertain that it provides for the following:

1. The retention by the municipal officer concerned of a portion of the funds collected as fines, penalties, etc., in (a) state cases, and in (b) ordinance cases where prosecution could have been made under a state law, the funds so retained to be paid to the law library association.

2. In determining the amount to be so retained and paid to the library association there is to be deducted from the fines, etc., "accruing * * * for offenses * * * prosecuted in the name of the state," a sum which, plus the sums collected as costs in such state cases, is equal to the "compensation allowed by county commissioners to the judges of the municipal court presiding in police court, clerk and prosecuting attorney of such court in state cases," such deduction to be subject to the proviso that the payments monthly to the library association shall not be less than 25% of such funds so collected each month.

Although this statute does not contain any express provision relative to the disposition of sums thus deducted from funds accruing from the prosecution of state cases, it appears fairly evident that the sums thus remaining in the municipal officer's custody were to be made available eventually, whether directly or indirectly, to meet the county's obligation to the several court officers concerned with respect to the compensation allowed them by the county commissioners. Whether such sums are disbursed directly to the ultimate beneficiaries or whether paid into the county treasury and then disbursed to such beneficiaries would appear to be a matter of no moment so long as credit is given the county in the final accounting with respect to its obligation to pay the allowances made by the commissioners.

What is clearly evident, however, with respect to the funds thus deducted from the aggregate of funds arising in state cases, is that they should be withheld from the computation of the amounts due the library association, subject, of course, to the "25% monthly minimum" provision above noted.

One of the effects of thus withholding these sums from this computation is that the payments to the library association will be made up, to a relatively greater extent than would otherwise be the case, of those funds

accruing from the prosecution of ordinance cases which could have been prosecuted under a state law. Thus it would appear to be the legislative intent to insure a contribution to the library association by the municipal corporation which is to some extent related to the county's contribution to the expense of operating the court, and this I deem to be the purpose of this provision in the statute.

As you have pointed out, the "allowance" of funds from the county treasury for a portion of the compensation of municipal court judges and clerks is now fixed by law, the county's share thereof being two-fifths of the amount so fixed. In the case of the prosecutor and his assistants, however, the compensation received from the county treasury is such "as the board of county commissioners may prescribe." The precise question thus raised is whether that part of the compensation received by the judges and clerks from the county treasury is "allowed by the county commissioners" within the meaning of Section 3056, General Code.

Provision for the allowance of claims by the county commissioners is found in Section 2460, General Code, as follows:

"No claim against the county shall be paid otherwise than upon the allowance of the county commissioners, upon the warrant of the county auditor, except in those cases in which the amount due is fixed by law, or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the county auditor, upon the proper certificate of the person or tribunal allowing the claim. No public money shall be disbursed by the county commissioners or any of them, but shall be disbursed by the county treasurer, upon the warrant of the county auditor, specifying the name of the party entitled thereto, on what account, and upon whose allowance, if not fixed by law."

From the foregoing language it must be concluded that where the fact and amount of a claim is fixed by law there is no necessity for an "allowance of the county commissioners." It may well be doubted, however, whether the Legislature, in the use of the expression "allowed by the county commissioners" in Section 3056, *supra*, intended to restrict the application of that section to instances where the commissioners, acting in their discretion, "allowed" a claim against the county treasury.

The purpose of the "deduction provision" in Section 3056, *supra*, as already pointed out, is to withhold from the computation of the amounts

due the library association a sum equal to the county's contribution to the expenses of the court, and thereby to insure that a relatively greater proportion of the sums received by such association would be paid from funds accruing in ordinance cases which could have been prosecuted under a state law. Such being the general purpose or scheme of the statute, it should not be regarded as the intent of the Legislature to discard it unless such intent is manifest from the terms of the latter enactment, in this instance the municipal court act.

If those provisions in this later enactment which change the "allowance" of the county commissioners toward the expenses of operating the court to an amount fixed by law are given an ultra technical interpretation, it must be conceded that a portion of the formula set out in Section 3056, supra, can no longer be used because, in a strict sense, there is no longer any "allowance" made with respect to the judges and clerks of such courts. It is to be doubted, however, whether any such ultra technical interpretation can be justified which would result in the abolition of the general system or scheme represented by Section 3056, General Code. On this point it is said in 37 Ohio Jurisprudence, 665, 666, Section 366:

"In interpreting a statute, courts sometimes refer to the system or scheme of the legislation. As a general rule, where the legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, and they should be construed so as to harmonize with the general tenor or purport of the system unless a different purpose is plainly shown."

In the application of this rule, it becomes possible to harmonize the pertinent provisions of the municipal court act by regarding any of the sums contributed by the county to the compensation of the judges, clerks and prosecuting officers of municipal courts as "allowed by the county commissioners" within the meaning of Section 3056, General Code.

In your second question the ruling to which you apparently refer is Opinion No. 82, Opinions of the Attorney General for 1939, p. 93, the syllabus in which is as follows:

"The municipal court of Barberton may not set a schedule of fees in trusteeships created under Section 11728-1, General Code, which exceeds two per cent of the payments made by the debtor."

In that case the writer was concerned with the Barberton Municipal Court which, as provided in then existing Section 1579-1164, General Code, was authorized to tax fees and costs, in cases in which a justice of the peace had jurisdiction, in the same amounts allowed to the justice of the peace.

Section 11728-1, General Code, then provided, as it does now, in part :

“If application for a trustee be made to a judge in a municipal court such judge shall designate the clerk of such municipal court to act as trustee and said clerk shall serve without additional compensation and his official bond shall be construed as conditioned upon the fulfillment of the trust and no additional bond shall be required. If application for a trustee be made to a justice of the peace, such justice may receive as full compensation for his services as justice of the peace therein, two per cent of the total amount of the debtor's payment on claims as herein provided, and may appoint any suitable person to act as trustee. Such trustee shall give bond as the justice shall fix, conditioned upon the fulfillment of the trust, to be paid for by the debtor applicant, and said trustee shall receive as full compensation for his services as such trustee, two per cent of the total amount of the debtor's payment on claims as herein provided, all said compensation to be paid before distribution to creditors as above provided.”

In view of the limitation in this section of the justice's fees to 2% of the debtor's payments, the writer of the 1939 opinion, *supra*, concluded that the Barberton court was likewise limited to such amounts.

In the instant case we find no such limitation. In Section 1605, General Code, municipal courts may establish a system of fees and costs in its discretion which do not “exceed the fees and costs provided by law for a similar action or proceeding in the court of common pleas.”

I am unable to find any statutory provision relating to fees and costs which may be charged by a common pleas court in trusteeship cases and so conclude that the establishment of the fee schedules you have described cannot be deemed to be contrary to law.

Accordingly, in specific answer to your inquiry, it is my opinion that :

1. The compensation of judges and clerks of municipal courts for which provision is made in Sections 1591 and 1610, General Code, should be taken into account in the determination, as provided in Section 3056,

General Code, of the amounts payable monthly to a county law library association.

2. The provisions of Section 11728, General Code, do not limit the authority of a municipal court to establish a schedule of fees and costs as authorized in Section 1605, General Code. Opinion No. 82, Opinions of the Attorney General for 1939, p. 93, distinguished.

Respectfully,

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