

1293.

APPROVAL, BONDS OF GREEN TOWNSHIP RURAL SCHOOL DISTRICT,  
SUMMIT COUNTY—\$63,000.00.

COLUMBUS, OHIO, November 25, 1927.

*Industrial Commission of Ohio, Columbus, Ohio.*

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1294.

APPROVAL, BONDS OF THE VILLAGE OF ELIDA, ALLEN COUNTY,  
OHIO—\$2,500.00.

COLUMBUS, OHIO, November 25, 1927.

*Industrial Commission of Ohio, Columbus, Ohio.*

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1295.

MARRIAGE FEE—JUDGE OF MUNICIPAL COURT OF CINCINNATI MAY  
CHARGE FEE OF THREE DOLLARS—SUCH FEE SHALL BE PAID  
INTO THE CITY TREASURY.

**SYLLABUS:**

1. *A judge of the municipal court of Cincinnati, under the provisions of Sections 1558-14 and 1558-45, General Code, may legally solemnize marriages and charge the same fee that a justice of the peace may charge, which is three dollars.*

2. *Such fee so charged by the municipal judge may not be lawfully retained by him, but is required to be paid into the city treasury, the same as other moneys received by him in his official capacity.*

COLUMBUS, OHIO, November 25, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your letter dated October 29, 1927, which reads as follows:

“Section 1558-45, part of the Cincinnati Municipal Court Act, reads:

'Any judge of the municipal court shall have jurisdiction and authority : to administer an oath authorized or required by law to be administered; to take the acknowledgments of deeds, mortgages and other instruments of writing; to solemnize marriages.'

Section 1558-14 of the act determines the general powers and duties of the judges of the court and confers upon them all powers that may be exercised by a justice of the peace.

Section 1558-36 as amended 112 O. L. 180 provides a fixed amount that may be taxed as costs but neither this nor any other section of the court act makes specific mention of marriage fees

Section 1746-2, G. C., provides that justices of the peace shall charge and collect \$3.00 for performing the marriage ceremony and making return thereof.

QUESTION 1. May judges of the municipal court of Cincinnati legally tax a fee of \$3.00 for performing marriage ceremonies?

QUESTION 2. May such fees be retained by the judges of the court?

Opinion No. 1226 of 1916 may be pertinent."

The several sections of the General Code relating to the municipal court of Cincinnati appear as Sections 1558-1 to 1558-45, both inclusive, of the General Code.

As stated in your letter, Section 1558-14, General Code, enumerates the general powers and duties of the judges of the municipal court of Cincinnati and in so far as may be pertinent to your inquiry provides :

"\* \* \* The judges of the court may sit separately or otherwise \* \* \* shall prescribe forms \* \* \* adopt and publish rules governing practices and procedure not otherwise provided for in this act \* \* and may exercise all powers which are now, or may hereafter be conferred \* \* \* upon justices of the peace \* \* \* or are necessary for the exercise of the jurisdiction herein conferred \* \* \*."

By an act of the legislature passed February 6, 1914, (104 O. L. 187) Section 1558-45, was enacted to read as it now appears in the General Code, viz.:

"Any judge of the municipal court shall have jurisdiction and authority to administer an oath authorized or required by law to be administered; to take the acknowledgments of deeds, mortgages and other instruments of writing; and to solemnize marriages."

Section 1558-4, General Code, fixes the salary of the judges of the municipal court of Cincinnati and provides :

"The salary of the judge of the municipal court shall be five thousand five hundred (\$5,500.00) dollars per annum \* \* \*. The presiding judge shall receive a salary of six thousand (\$6,000.00) dollars per annum, \* \* \*"

Section 1558-29, General Code, provides in part as follows :

"From and after January 1, 1926, the clerk of courts of Hamilton county shall be the clerk of the municipal court \* \* \*."

Section 1558-30, General Code, which relates to the powers and duties of the clerk of the municipal court of Cincinnati, provides *inter alia* as follows:

"\* \* \* 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 all costs \* \* \*, the balance of such fines and penalties monthly to the treasurer of the city of Cincinnati. \* \* \* He shall keep a book showing all receipts and disbursements, \* \* \*"

Section 1558-31, General Code, provides in part that:

"All moneys deposited as security for costs and all other moneys, other than costs, paid into the municipal court shall be noted on the record of the cause in which they are paid and shall be deposited by the clerk in such banking institution \* \* \* there to abide the order of the court. \* \* \*"

Section 1558-36, General Code, as amended by the 87th General Assembly (112 O. L. 180) to which you refer, relates to costs in civil cases and is not pertinent to the question that you present.

The foregoing sections are the only ones of the General Code relating to the municipal court of Cincinnati which are in any way pertinent to your inquiry. While I find no section specifically authorizing a judge thereof to charge a specified fee for solemnizing a marriage, yet Section 1558-14, General Code, provides that the judge of the municipal court

"may exercise all powers which are now, or may hereafter be conferred \* \* \* upon justices of the peace \* \* \* or are necessary for the exercise of the jurisdiction herein conferred \* \* \*"

It is apparent that it was the intention of the legislature in the above enactment to confer upon the judges of the municipal court the authority to exercise all the powers which were then, and that might thereafter be conferred upon justices of the peace or that might be "necessary for the exercise of the jurisdiction \* \* \* conferred \* \* \*"

One of the powers which the justices of the peace had then, under the provisions of Section 11182, General Code, was the power to "solemnize marriages" and to charge a fee therefor.

It is my opinion that the above enactment authorizes the judge of the municipal court of Cincinnati to solemnize marriages the same as the justice of the peace might do and also when it provides that the judge may "exercise all powers which are now, or may hereafter be conferred \* \* \* upon justices of the peace \* \* \*" or such as "are necessary for the exercise of the jurisdiction herein conferred \* \* \* " it contemplates that he may charge the usual fee therefor as charged by the justices of the peace.

It is pertinent to observe that the General Assembly, as shown in 109 Ohio Laws, page 304, amended Section 1746-2, General Code, providing fees for justices of the peace in miscellaneous services, increased the fee from two dollars to three dollars for performing the marriage ceremony.

You refer to a former opinion of this department which is reported in Opinions, Attorney General, 1916, Vol. I, page 177, the syllabus of which reads:

"Judges of the municipal court of the city of Columbus are not authorized to retain the legal fee of \$2.00 collected by them for solemnizing marriages. Such fee should be collected by the clerk of the municipal court and paid into the city treasury as other fees and costs collected by him."

The following language appears therein:

"Section 1746 of the General Code, provides that a justice of the peace may receive a fee of \$2.00 for 'marrying and making return.'

Section 1558-51 of the General Code (106 O. L. 366), prescribing the original jurisdiction of the municipal court of Columbus, Ohio, provides in part as follows:

'The municipal court shall have and exercise original jurisdiction within the limits of the city of Columbus as follows: \* \* \*

9. The right to perform marriage ceremonies \* \* \* and perform any other duties now given or that may be conferred upon justices of the peace. \* \* \*

It is to be noted from the language just quoted that the right to perform the marriage ceremony is made an official act of the municipal court rather than the prerogative of the several individuals constituting that court.

Under Section 1558-85 of the General Code (106 O. L. 378), the municipal court of Columbus is, by reference, given authority to tax the same fees and costs as are justices of the peace for like services. Therefore, the proper fee for performing a marriage ceremony by the municipal court of Columbus is \$2.00, as stated in your letter.

Section 1558-48 of the General Code (106 O. L. 366), fixes an annual salary for the judges of such municipal court, and it must be concluded that this salary is intended as compensation for all official acts or for all services performed under the command or authority of the municipal court act.

Section 1558-79 of the General Code (106 O. L. 375) prescribing the duties of the clerk of such municipal court is, in part, as follows:

'\* \* \* He shall pay over to the proper parties all money received by him as clerk; he shall receive and collect all costs, fees, fines and penalties, and shall pay the same monthly into the treasury of the city of Columbus and take a receipt therefor, except as otherwise provided by law; \* \* '

As above stated the right to perform the marriage ceremony is a part of the section conferring original jurisdiction upon the court. For such services a fee of \$2.00 is authorized, and no distinction should be made or different rule should apply in the collection and disposition of the fees for performing the marriage ceremony than is made and applied in the collection and disposition of fees and costs charged and collected for any other official act.

I am, therefore, of the opinion that the judges of the municipal court of the city of Columbus, Ohio, are not authorized to retain the legal fee of \$2.00 for solemnizing marriages, but that the same should be collected by the clerk of said court and paid into the city treasury as other costs and fees."

Specifically answering your first question it is my opinion that a judge of the municipal court of Cincinnati may legally tax a fee of three dollars for solemnizing marriages.

In answer to your second question it is my opinion that such judge may not legally retain the fee so charged by him, but that the same shall be paid into the treasury of the city of Cincinnati the same as other moneys received by him in his official capacity.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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1296.

**AUTOMOBILE—FOR USE OF VISITING AGENT OF COUNTY CHILDREN'S HOME—MAY NOT BE PURCHASED BY COUNTY COMMISSIONERS—WHAT DEPARTMENTS ARE UNDER DIRECT CONTROL OF COUNTY COMMISSIONERS WITHIN PROVISIONS OF SECTION 2412-1, GENERAL CODE.**

**SYLLABUS:**

1. *Neither the county children's home, nor the child welfare board, established under the provisions of Section 3092, General Code, is a department under the direct control of the county commissioners within the provisions of Section 2412-1, General Code, relating to the purchase of automobiles.*

2. *Neither the board of trustees of the county children's home, nor the child welfare board may legally purchase an automobile for the use of the visiting agent authorized to be appointed by Section 3099, General Code.*

3. *The county home, the county tuberculosis hospital, when the county commissioners constitute the board of trustees of said hospital, and other similar institutions, are departments under the direct control of the county commissioners within the provisions of Section 2412-1, General Code.*

COLUMBUS, OHIO, November 25, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication which reads:

"You are respectfully requested to render this department your written opinion upon the following:

Section 2412-1 of the General Code provides that if the board of county commissioners deem it necessary to purchase a motor vehicle or vehicles for their use or for the use of any department under their direct control, application shall be made by them to a judge of the court of common pleas of said county; who, if upon the hearing thereof finds it necessary and expedient to purchase such vehicle or vehicles shall so order fixing the number and kind of such vehicles, and the amount to be expended for each.

Question 1. Is the children's home, or the welfare board, established under the provisions of Section 3092 of the General Code, a department under the direct control of the county commissioners, for which they may purchase automobiles in compliance with the provisions of Section 2412-1, General Code?

Question 2. May the trustees of the children's home or the welfare board legally purchase an automobile for the use of their visiting agent?