

Richmond case, *supra*, that it became clear that national banks could object to a discrimination in favor of institutions other than state banks. While these speculations do not explain the inactivity of the taxing officials, they tend to account for the long acquiescence of others in what is now believed to be an erroneous interpretation of that section.

However that may be, it is the opinion of this department, for the reasons above stated, that the shares of stock in a corporation organized for the purpose of dealing in bonds, stocks and other evidences of indebtedness, and which is actually engaged in the conduct of such business, are subject to taxation by the same method as that applied to the shares of stock of state and national banks, namely, that provided for by section 5408 et seq. of the General Code; and conversely, that the property of such companies (excepting the real estate; see section 5409 G. C.) is not subject to taxation under the general property tax laws of the state.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3129.

MUNICIPAL COURTS OF CLEVELAND—WITNESS FEES COLLECTED
 BY CLERK OF SAID COURT PAYABLE INTO COUNTY TREASURY.

Witness fees when collected by the clerk of the municipal court of Cleveland, under the provisions of section 3014 G. C., are properly payable into the county treasury.

COLUMBUS, OHIO, May 23, 1922.

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

GENTLEMEN:—In your recent communication you request my opinion on the following:

“Section 1579-41 G. C. provides in part that the clerk of the municipal court of the city of Cleveland 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.

Under this provision witness fees are collected from defendants in state criminal cases and paid into the city treasury.

Section 3014 G. C. provides in part that each witness attending before a justice of the peace, police judge or magistrate, or mayor under subpoena in criminal cases, shall be allowed the fee provided for witnesses in the court of common pleas, and in state cases said fees shall be paid out of the county treasury, and in ordinance cases out of the municipal treasury, upon the certificate of the judge or magistrate, and the same taxed in the bill of costs. When the fees herein enumerated have been collected from the judgment debtor, they shall be paid to the public treasury from which said fees were advanced.

QUESTION: In view of the last paragraph of said section 3014 G. C., is it legal to pay witnesses in criminal cases prosecuted in the municipal court of the city of Cleveland, Ohio, from the county treasury upon proper certificates, and then when such costs are collected deposit same in the city treasury in accordance with section 1579-41 of the General Code?"

Your letter sufficiently states the substance of sections 1579-41 and 3014 G. C. applicable to the question at hand. Upon first consideration it would seem that there is a conflict between said sections; that is, if "costs" as mentioned in the former section includes "witness fees" as provided for in the latter section. If there is such conflict, then there is some doubt as to which would control, as section 3014 is the later enactment and is also a special enactment in that it relates to witness fees and provides a special provision for the payment thereof. Therefore, if there is a conflict, it is believed there is more argument to the effect that section 3014 will control than there is in support of the proposition that section 1579-41 should control. However, it is a familiar rule of statutory construction that two statutes will not be held to be in conflict with the result that one repeals the other by implication, if there is any way of harmonizing the two provisions. The legislative intention as gathered from the enactment should be the guide. It is clear that it was the purpose of the legislature in the enactment of section 3014 to provide for the payment of witness fees in all criminal cases, irrespective of the outcome of the proceedings; hence the provision for the payment out of the county treasury. After having made this provision, the legislature further provided that in the event the fees were collected, the county treasury should be reimbursed.

While it will be conceded that the word "costs" in section 1579-41 includes "witness fees" for the purpose of collection, it is not clear that it was the legislative intent to require such collection to be paid into the municipal treasury. The former part of the section directs the treasurer to pay to the "proper party" all moneys coming into his hands. It will be observed that the word "money" is a broader term than the word "costs" in the latter part of the section. Now, if a strict technical construction of the section was intended, then in a case in which witness fees are demanded before testimony is given in a civil proceeding in the municipal court of Cleveland, and the litigant advances said witness fees and later is successful in suit, it would be the duty of the clerk to collect such fees and pay them into the city treasury. In such a case the successful party could not recover his costs which he had advanced for witness fees. It is apparent that no such absurd result was intended, and the section should not be so construed.

It will be seen that there is an inconsistency in the two provisions of section 1579-41 above mentioned, if the technical construction is that all costs collected by the clerk must be paid into the municipal treasury. In the case above described the clerk cannot pay the money coming into his hands to the "proper party" and at the same time pay it into the city treasury.

In Opinion No. 2875, dated February 20, 1922, this department held, in view of the provisions of section 4270, as amended in 108 O. L., Part II, 1208, in which the fees taxed for a chief of police are payable to the city treasury, that under section 3016, as amended in 109 O. L. 173, the municipal treasury was the proper "party entitled thereto".

It would seem logical to conclude in the case under consideration that the county treasury is the "proper party" to receive the payment of witness fees under the provisions of section 1579-41.

You are therefore advised that it is the opinion of this department, in view of the express provisions of section 3014 to the effect that the county treasury shall be reimbursed for the witness fees advanced when such fees are collected, and

the provisions of section 1579-41 to the effect that money collected by the clerk shall be paid to the proper party, the proper conclusion must be that the witness fees when collected by the clerk of the municipal court of Cleveland should properly be paid into the county treasury.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3130.

DISAPPROVAL, BONDS OF VILLAGE OF ANNA, \$4,260, FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, May 24, 1922.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

Re.: Bonds of the village of Anna, Ohio, in the sum of \$4,260.00, in anticipation of the collection of assessments on abutting property owners to pay a part of the cost and expense of improving I. C. H. No. 164 in and through said village.

GENTLEMEN:—I have carefully examined the transcript of the proceedings of the council of the village of Anna relating to the above issue of bonds and note the following objections which prevent my approval of these bonds on the transcript submitted:

(1) The transcript fails to show an application by the county commissioners to the state highway commissioner for state aid in the construction of this inter-county highway improvement.

(2) In addition to said application the transcript should show an approval of the same by the state highway commissioner or the state highway advisory board.

(3) The transcript does not show any preliminary ordinance or resolution on the part of the council of the village granting consent to said improvement. It would have been quite proper for council to have passed such ordinance but probably this defect is not fatal for the reason that such consent is necessarily given in resolution No. 220, set out in the transcript, which provides for an additional width of said improvement through the village.

(4) The transcript does not show that resolution No. 220, providing for an increased width of the improvement through the village, was actually passed. It shows that after the resolution was read the rules were suspended by a yea vote of all the members of council, but fails to show any action by council with respect to the passing of the resolution.

(5) The transcript shows that resolution No. 220 was posted in five most conspicuous places in the village but does not show that same was posted in five or more of the most public places in the village as determined by council, as required by section 4232 G. C.

(6) The resolution of necessity provides for payment of assessments in twenty annual installments. As to this, however, I note that the ordinance to proceed correctly fixes the number of annual installments at nine.

(7) The ordinance providing for the issue of these bonds was passed April 3, 1920, before council passed the ordinance to proceed. This to my mind was an error fatal to the issue of these bonds.