

547.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND H. ORION WHITTAKER, DAYTON, OHIO—COMPLETE CONSTRUCTION OF NEW DORMITORY AND REMODELING OF THE PRESENT DORMITORY OF TUBERCULOSIS SHACKS, DAYTON STATE HOSPITAL, DAYTON, OHIO, AT A COST OF \$8,800.00—SURETY BOND EXECUTED BY T. D. EICHELBERGER'S SONS AND WM. PÜSCH.

COLUMBUS, OHIO, June 30, 1923.

HON. LEON C. HERRICK, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval contract between the State of Ohio, acting by the Department of Highways and Public Works and H. Orion Whittaker of Dayton, Ohio. This contract covers the complete construction of new dormitory and remodeling of the present dormitory of the Tuberculosis Shacks of the Dayton State Hospital at Dayton, Ohio, and calls for an expenditure of \$8,800.00.

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has further been submitted a contract bond upon which T. D. Eichelberger's Sons and Wm. Pusch appear as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was waived by the controlling board, informal bids received and tabulated as required by law and the contract duly awarded.

Finding said contract and bond in proper legal form I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

C. C. CRABBE,

*Attorney General.*

548.

MUNICIPAL COURT OF PIQUA—PROVISIONS OF SECTION 3056 G. C. NOT APPLICABLE.

SYLLABUS:

*The provisions of section 3056, General Code, are not applicable to the municipal court of Piqua, Ohio.*

COLUMBUS, OHIO, June 30, 1923.

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

GENTLEMEN:—I am in receipt of your recent communication, in which you inquire as follows:

"Are the provisions of section 3056 G. C. applicable to the municipal court of Piqua, Ohio?"

The municipal court of Piqua, Ohio, was established by a special act found in 109 O. L., p. 555.

Section 1579-570, General Code of Ohio, as found in 109 O. L., p. 559, provides:

"In all criminal cases and proceedings the practice and procedure and the mode of bringing and conducting the procedure of defense and the powers of the court in relation thereto, shall be the same as those which are now, or may hereafter be, possessed by police courts or the mayor in municipalities unless as otherwise provided herein."

Section 1579-586, which relates to the powers and duties of the clerk of the municipal court of Piqua, provides in part:

"\* \* \* 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; he shall pay the same monthly to the treasurer of the city of Piqua, and take his receipt therefor, except in state cases he shall pay over all cash and fines to Miami county, but money deposited as security for costs shall be retained by him pending the litigation; \* \* \*"

This section specifically directs that all costs, fines and penalties shall be paid by the clerk monthly to the treasurer of the city of Piqua and take his receipt therefor, except in state cases he shall pay over all cash and fines to Miami county. Section 3056, General Code, provides:

"All fines and penalties assessed and collected by the police court for offenses and misdemeanors prosecuted in the name of the state, except a portion thereof equal to the compensation allowed by the county commissioners to the judges, clerk and prosecuting attorney of such court in state cases shall be retained by the clerk and be paid by him quarterly to the trustees of such law library associations, but the sum so retained and paid by the clerk of said police court to the trustees of such law library association shall in no quarter be less than 15% of the fines and penalties collected in that quarter without deducting the amount of the allowances of the county commissioners to said judges, clerk and prosecutor. In all counties the fines and penalties assessed and collected by the common pleas court and probate court for offenses and misdemeanors prosecuted in the name of the state, shall be retained and paid quarterly by the clerk of such courts to the trustees of such library association, but the sum so paid from the fines and penalties assessed and collected by the common pleas and probate courts shall not exceed five hundred per annum. The moneys so paid shall be expended in the purchase of law books and the maintenance of such association."

This section provides that all fines and penalties assessed and collected by the police court for offenses and misdemeanors prosecuted in the name of the state, except a certain portion, shall be paid by the clerk quarterly to the trustees of such law library association. This section is in direct conflict with section 1579-586. If the clerk obeys the requirement of section 1579-586, it is certain that

he cannot also pay the money over to the law library association. The clerk certainly cannot obey the requirements of both of these sections. If the clerk is controlled by both sections of the statute, the statutes are irreconcilable, and where two statutes are irreconcilable, the latter must prevail. *State ex rel. Guilbert v. Halliday*, 63 O. S., p. 165.

Section 3056, General Code, is a general section applying to all police courts, and while this section has been held to apply to municipal courts where such municipal court succeeds the police court, in this case the municipal court has not replaced a police court, but has replaced a mayor's court.

Section 1579-586 is a special act providing for the municipal court of Piqua and it is a generally well known rule of law that where a special act is in conflict with a general act, the special act will prevail.

In the case of *State of Ohio ex rel. The Cleveland Law Library Association v. Peter J. Henry*, found in 23 O. C. C. (N. S.), 541, it was held:

"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 view of the general rules of law and of the above decision, it is my opinion that the provisions of section 3056, General Code of Ohio, are not applicable to the municipal court of Piqua, Ohio.

Respectfully,

C. C. CRABBE,

*Attorney General.*

549.

ABSTRACT STATUS OF TITLE, 151.86 ACRES OF LAND,  
FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, July 2, 1923.

MR. CARL E. STEEB, *Secretary of the Board of Trustees, Ohio State University, Columbus, Ohio.*

DEAR SIR:—You have submitted an abstract certified to by John K. Kennedy, attorney-at-law, on June 20th, 1923, and inquire as to the status of the title to 151.86 acres of land situated in the State of Ohio, County of Franklin and Township of Clinton, more particularly described in said abstract.

After an examination it is the opinion of this department that said abstract shows the title to said premises to be in the name of Anna M. Watterman, subject to the encumbrances hereinafter pointed out.