

2270.

APPROVAL, BONDS OF SHEFFIELD LAKE VILLAGE SCHOOL DISTRICT,  
LORAIN COUNTY, \$6,000.00.

COLUMBUS, OHIO, March 7, 1925.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

2271.

FEEES IN STATE CASES—CHIEF OF POLICE OF PIQUA ENTITLED TO  
FEES WHEN COLLECTED BY CLERK OF MUNICIPAL COURT.

*SYLLABUS:*

1. *The chief of police of Piqua is entitled to fees in state cases when collected by the clerk of the municipal court.*
2. *The chief of police, or any other police officer of the city of Piqua, except the bailiff of municipal court, is entitled to fees in felony cases, collected by the clerk of courts of Miami County from the State of Ohio.*

COLUMBUS, OHIO, March 9, 1925.

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

GENTLEMEN:—This will acknowledge receipt of your letter of February 28, 1925, as follows:

“The municipal court of the city of Piqua, Miami county, was created by the legislature in 1921 (109 O. L. 555). Section 1579-586 G. C. of such act reads:

“The clerk of the municipal court shall have power to administer oaths and take affidavits and to issue execution upon any judgment rendered in the municipal court, including a judgment for unpaid costs; he shall have power to issue and sign all writs, processes and papers issuing out of the court, and to attach the seal of the court thereto; shall have power to approve all bonds, recognizances and undertakings, fixed by any judge of the court or by law; shall file and safely keep all journals, records, books and papers belonging to or appertaining to the court, record its proceedings and perform all other duties which the judge of the court shall prescribe. 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; he shall keep a record showing all receipts and disbursements, which shall be open for public inspection at all times, and shall on the first Monday of each term of court make to the city auditor a report of all receipts and disbursements for the preceding term.’

“Question 1. In view of the above provisions, is the chief of police of the city of Piqua entitled to fees in state cases when collected by the clerk of the municipal court?

"Question 2. Is the chief of police or any other police officer of the city of Piqua entitled to fees in felony cases which are collected by the clerk of courts of Miami county from the state of Ohio?"

"Section 1579-586 of the Piqua Act is similar to section 1579-627 of the Lorain Municipal Court Act with respect to disposition of fines, costs and penalties. In a letter dated November 22, 1923, you advised the bureau relative to 1579-627 G. C. in part as follows:

"It is my opinion that the word "costs" and "cash" were used synonymously and that under the existing law costs collected in said cases (State) are properly payable into the county treasury."

"This Bureau has instructed the officials of Piqua to pay all costs in state cases to the county treasury, but such officials do not concur in your views and are depositing all costs collected by the clerk of the municipal court in the city treasury."

Section 1579-586, General Code, reads:

"The clerk of the municipal court shall have power to administer oaths and take affidavits and to issue execution upon any judgment rendered in the municipal court, including a judgment for unpaid costs; he shall have power to issue and sign all writs, processes and papers issuing out of the court, and to attach the seal of the court thereto; shall have power to approve all bonds, recognizances and undertakings, fixed by any judge of the court or by law; shall file and safely keep all journals, records, books and papers belonging to or appertaining to the court, record its proceedings and perform all other duties which the judge of the court shall prescribe. 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; he shall keep a record showing all receipts and disbursements, which shall be open for public inspection at all times, and shall on the first Monday of each term of court make to the city auditor a report of all receipts and disbursements for the preceding term."

Section 1579-589 is as follows:

"The bailiff shall be appointed by the judge of such court and hold office during the pleasure of the court, and may be removed at any time by the judge of the municipal court. Every police officer of the city of Piqua shall be ex-officio a deputy baliff of the municipal court and the chief of police shall assign one or more such police officers from time to time to perform such duties in respect to cases within the jurisdiction within said court as may be required of them by said court or the clerk thereof."

Section 1579-591 General Code, reads in part as follows:

"In criminal cases all fees and costs shall be the same as fixed with respect to police, or other municipal courts."

Section 4270 General Code reads:

"All fines and forfeitures in ordinance cases and all fees collected by the mayor, or which in any manner comes into his hands, due such mayor or to a marshal, chief of police or other officer of the municipality and any other fees and expenses which have been advanced out of the municipal treasury, and all moneys received by such mayor for the use of the municipality, shall be by him paid into the treasury of the municipality on the first Monday of each month, provided that the council of a village may, by ordinance, authorize the mayor and marshal to retain their legal fees in addition to their salaries, but in such event a marshal shall not be entitled to his expenses. At the first regular meeting of council in each and every month, he shall submit a full statement of all moneys received, from whom and for what purposes received and when paid into the treasury. Except as otherwise provided by law, all fines and forfeitures collected by him in state cases together with all fees and expenses collected, which have been advanced out of the county treasury, shall be by him paid over to the county treasury on the first business day of each month."

The Supreme Court of Ohio, in the case of *State, ex rel. Nead, a Taxpayer, vs. Nolte, Mayor*, held as follows:

"Section 4270 General Code, as amended in 108 O. L., Pt. 2, page 1208, imposes no duty upon the mayor of a municipality to pay into the city treasury the fees taxed in favor of such mayor in the hearing of state cases."

This was also the holding of the court of appeals at Portsmouth, Ohio, in the case of *City of Portsmouth vs. Milstead*, 8 O. C. C. (n. s.) 114, affirmed by the Supreme Court in 76 Ohio St. 597.

The language of section 4270, General Code, is much stronger than that used in section 1579-583, and yet the Supreme Court held that fees earned by a chief of police belonged to him and not to the city.

The chief of police is an employe of the city; the law provides that fees may be charged for his services in state cases and that he may serve process.

In our letter of November 22, 1923, mentioned by you, we said, in construing a similar statute, that

"In view of this fact, it is my opinion that the word 'costs' and 'cash' were used synonymously and that, under the existing law, costs collected in said cases are properly payable into the county treasury."

While it is true that fees become cash when collected and in the hands of the clerk, yet it is my belief that the legislature did not have fees in mind when the word "cash" was inserted in this statute.

Section 1579-591, General Code, reads in part:

"\* \* \* In criminal cases all fees and costs shall be the same as fixed with respect to police, or other municipal courts."

This section seems to draw a distinction between fees and costs.

Bouvier's Dictionary defines "fees" as "A reward or wages given to one for the execution of his office."

"Fees differ from costs in this, that the former are \* \* \* a recompense to the officer for his services; and the latter, an indemnification to the party for money laid out and expended in his suit."

"Cash," then, would apply only to money to which the county had title and would include fines and costs.

Section 1579-586 says the clerk shall pay over to the proper parties all moneys collected by him as clerk.

The part of said section which says "He shall receive and collect all costs, fines and penalties; he shall pay the same monthly to the treasurer of the city of Piqua," under the rule laid down in the Nolte case applies only to ordinance cases, as state cases are made an exception in this section the same as in section 4270, and the only question raised therein is because of the use of the word "cash," and "cash," in my opinion, does not cover "fees" under this section.

It is my opinion, therefore, that the chief of police of Piqua is entitled to his fees in state cases.

This being true, it follows that the chief and other police officers, except the bailiff, of Piqua, are entitled to their fees in state cases, which include those collected by the clerk of courts of Miami county in felony cases.

Respectfully,  
C. C. CRABBE,  
*Attorney-General.*

2272.

APPROVAL, ARTICLES OF INCORPORATION OF THE CONTINENTAL  
AUTOMOBILE MUTUAL INSURANCE COMPANY.

COLUMBUS, OHIO, March 9, 1925.

HON. THAD H. BROWN, *Secretary of State, Columbus, Ohio.*

2273.

APPROVAL, AMENDMENT TO THE ARTICLES OF INCORPORATION OF  
THE ALLIED MOTOR MUTUAL INSURANCE COMPANY.

COLUMBUS, OHIO, March 9, 1925.

HON. THAD H. BROWN, *Secretary of State, Columbus, Ohio.*

2274.

LAW RELATING TO TRANSPORTATION OF SCHOOL CHILDREN DIS-  
CUSSED.

*SYLLABUS:*

*Although the sections of the General Code of Ohio relating to the subject of transportation of school children require that when transportation is furnished the school conveyance shall pass within one-half mile of the residence of such pupils, said sections do not justify*