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1. FINES—ARRESTS—SECTION 1610 (F)—PROVISIONS DO NOT HAVE EFFECT TO REPEAL BY IMPLICATION PROVISIONS OF SECTION 1183-4 G.C.
2. MUNICIPAL ORDINANCE—VIOLATION—MONEYS COMING INTO CUSTODY OF CLERK OF MUNICIPAL COURT —FEES, PENALTIES, BAIL—CLERK SHOULD PAY MONEYS INTO MUNICIPAL TREASURY THE ORDINANCE OF WHICH WAS VIOLATED.
3. STATE LAW—VIOLATION—COSTS, FEES, PENALTIES, BAIL—CLERK OF MUNICIPAL COURT SHOULD PAY MONEYS INTO TREASURY OF MOST POPULOUS CITY IN TERRITORY WITHIN WHICH COURT EXERCISES JURISDICTION—SECTION 4300 G.C.
4. PROVISIONS OF BRANCHES 2, 3 QUALIFIED AS TO ABSENCE OF STATUTORY AUTHORITY.

SYLLABUS:

1. The provisions of Section 1610(F), General Code, do not have the effect of repealing by implication the provisions of Section 1183-4, General Code.

2. In cases involving a violation of a municipal ordinance, to the extent that statutory provision is not otherwise made for the disposition of moneys coming into the custody of the clerk of a municipal court, including fees, penalties, bail, and other moneys payable to any officer of the court, the clerk should, under the provisions of Section 4300, General Code, pay such moneys into the treasury of the municipality the ordinance of which was violated.

3. In cases involving a violation of a state law, to the extent that statutory provision is not otherwise made for the disposition of moneys coming into the custody of the clerk of a municipal court, including costs, fees, penalties, bail and other moneys payable to any officer of the court, the clerk should, under the provisions of Section 4300, General Code, pay such moneys into the treasury of the most populous city in the territory within which such court exercises jurisdiction.

Columbus, Ohio, February 8, 1952

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

This will acknowledge your request for my opinion on the following questions:

"In view of the provisions of Section 1610(F), General Code,

"(a) how shall the moneys received by a municipal court for fines assessed in state cases, where the arrest was made by a state highway patrolman, be distributed by the clerk in view of the provisions of Section 1183-4, General Code?

"(b) how shall the moneys received by a municipal court for costs assessed in state cases be distributed by the clerk?

"(c) how shall the money received from bond forfeitures in cases where the arrest was made for violation of either a municipal ordinance or a state statute be distributed by the clerk?"

Since all of these questions are concerned with the requirements of the new Uniform Municipal Court Act relative to distribution of funds coming into the possession of the clerk of the municipal court, we may first note the provisions of Section 1610(F), General Code. This paragraph reads as follows:

"The clerk of a municipal court shall receive and collect all *costs, fees, fines, penalties, bail, and other moneys* payable to the office or to any officer of the court and issue receipts therefor, and shall each month disburse the same to the proper persons or officers and take receipts therefor, provided that *fines and costs* received for violation of municipal ordinances shall be paid into the treasury of the municipality the ordinance of which was violated and to the county treasury all *fines* collected for violation of state laws, subject to sections 3056 and 3056-3 of the General Code. Moneys deposited as security for costs shall be retained pending the litigation. He shall keep a separate account of all receipts and disbursements in civil and criminal cases, which shall be a permanent public record of the office, as required by the bureau of inspection and supervision of public offices, and on the expiration of his term such records shall be delivered to his successor. He shall have other powers and duties as may be prescribed by rule or order of the court." (Emphasis added.)

It will be noted that this statute prescribes a general rule for the distribution of funds in the hands of the municipal court but makes such general rule "subject to Sections 3056 and 3056-3 of the General Code." There are, however, as you have indicated in your inquiry, certain other special statutory provisions relative to the disposition of such funds. Among these are the provisions of Section 1183-4, General Code. This section reads in part as follows:

"All fines collected from, or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen shall be paid one-half into the state treasury and one-half to

> the treasury of the incorporated city or village where such case is prosecuted. Provided, however, if such prosecution is in a trial court outside of an incorporated city or village such money shall be paid one-half into the county treasury. Such money so paid into the state treasury shall be credited to the 'state highway maintenance and repair fund' and such money so paid into the county, city or village treasury shall be deposited to the same fund and expended in the same manner as is the revenue received from the registration of motor vehicles. * * *"

In the ordinary situation it might be supposed that where the General Assembly has prescribed a certain general rule and has stated only one exception thereto, the intention was to exclude any exceptions not so stated.

It must be borne in mind, however, that a *general* statutory provision is found in Section 1610(F), supra, and that Section 1183-4, supra, is a *special* provision relative to the same subject.

It is a familiar rule of statutory construction that special statutory provisions will prevail over general provisions on the same subject even though the general provision is enacted at a later date, unless it appears that the legislature intended to make the general act controlling. 59 Corpus Juris, 1056, section 623.

In the instant case if there is a legislative intent to make the general act controlling, that intent must be discovered by implication.

It is well established under the Ohio decisions that repeals by implication are not favored and will be given recognition only in cases of clear and irreconcilable repugnance between the two statutes involved. Thus in 37 Ohio Jurisprudence, 398, Section 136, it is said:

> "* * * Except when an act covers the entire subject-matter of earlier legislation, is complete in itself, and is evidently intended to supersede the prior legislation on the subject, it does not by implication repeal an earlier act on the same subject, unless the two are so clearly inconsistent and repugnant that they cannot, by a fair and reasonable construction, be reconciled and effect be given to both. *If they can stand together or if both can be enforced concurrently, there is no implication of a repeal.* Furthermore, it is essential to repeal by implication that the repugnancy between the two statutes be irreconcilable, or as expressed by the various courts, necessary, clear, obvious, direct, strong, and absolute. * * *" (Emphasis added.)

It appears obvious to me in the instant case that as to the two statutes with which we are here concerned, there is no direct, strong, and absolute repugnance, and that it is easily possible for both statutes to stand together and to be enforced concurrently. For this reason I conclude with respect to your first question that the provisions of Section 1610(F), General Code, do not have the effect of repealing by implication any of the provisions of Section 1183-4, General Code; and that the latter is controlling on the question of distribution of fines in cases where the arrest is made by a state highway patrolman.

The same reasoning would be applicable and the same conclusion would result as to any other special statutory provisions relative to the distribution of the funds here in question.

Your second and third questions relative to distribution of certain of the funds coming into the hands of the clerk of the municipal court present somewhat more difficulty. It is to be observed that the clerk of the municipal court is required to "receive and collect all costs, fees, fines, penalties, bail, and other moneys payable to the office or to any officer of the court." Moreover, he is required each month to "disburse the same to the proper persons or officers." I find nothing in this statute to indicate what is meant by "the proper persons or officers." There is, following this language, a proviso relative to *fines* and *costs* received for violation of municipal ordinances, and a further proviso with respect to *fines* collected for violation of state laws. Neither this proviso nor any other provision of the municipal court act indicates what disposition shall be made of the costs, fees, penalties, bail and other moneys paid to the clerk in connection with cases involving violations of state laws, nor what disposition shall be made of fees, penalties, bail and other moneys paid to the clerk in connection with cases involving a violation of a municipal ordinance. No provision having been made with respect to these moneys in the municipal court act, it becomes necessary to ascertain whether the disposition of such funds would be governed by any of the general statutory provisions relating to the disposition of public moneys.

At this point it becomes necessary to examine the relationship of a municipal court to the municipal corporation in which it is established, the precise question being whether such court can to any extent be deemed to be an agency of such municipal corporation.

In State ex rel Stanley v. Bernon, 127 Ohio St., 204, the second, third and fourth paragraphs of the syllabus read as follows:

> "2. Municipalities of this state have no power, by charter or otherwise, to create courts.
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> "3. Under Sections 3 and 7 of Article XVIII of the Constitution of Ohio, municipalities have authority to provide by charter for the nomination of their elective officers.
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> "4. A judge of the Police Court of the City of Cleveland Heights is an elective municipal officer, whose nomination is governed by the charter of that city."

In the majority opinion by Weygandt, C. J., in this case, we find the following statement on the question of whether a police judge is a state or a municipal officer, p. 208:

> "However, the relatrix insists that the provision is inapplicable because a police judge is a state and not a municipal officer. She lays particular stress upon the fact that the court here involved is now a creature of the statute. Neither she nor the respondents cite Ohio authority with reference to this contention. Nevertheless, in 28 Ohio Jurisprudence, 302, appears the statement that 'a judge of a municipal court is a municipal and not a state officer.' Likewise in the case of State ex rel. Thompson v. Wall, Dir. of Finance, 17 N.P. (N.S.), 33, 28 O.D. (N.P.), 631, it was held that a judge of a municipal court is a municipal and not a state officer. Of course this is a decision of a *nisi prius* court, but the cogency of its reasoning and the recognized authorities upon which it relies entitle it to consideration, especially in view of the fact that the judgment was affirmed by the Court of Appeals. Of the same import are two decisions cited by the respondents. In the case of Franklin v. Westfall, 273 Ill., 402, 112 N.E., 974, it was held that a judge of a city court is an officer of the city, as distinguished from a state or county officer. In Buckner v. Gordon, 81 Ky., 665, a police judge was held to be a city officer whose election was governed by the charter."

In view of the strong reliance in this opinion on the reasoning set out in the Thompson case, it is appropriate to give that decision careful examination. In the course of the opinion by Snediker, J., we find the following statements:

> "Without going further into detail as to the exact provisions of the act with reference to jurisdiction, it is apparent that the judges of this court, as such, have both a criminal jurisdiction under the ordinances of the city and laws of the state, and a limited civil jurisdiction.

"Does the fact that the jurisdiction is of this dual character make the judge a state officer?

" 'The primary and fundamental idea of a municipal corporation is an institution to regulate and administer the internal concerns of the inhabitants of a defined locality in matters peculiar to the place incorporated, or at all events not common to the state or people at large; but it is the constant practice of the states in this country to make use of the incorporated instrumentality, or of its officers, to exercise powers, perform duties, and execute functions that are not strictly or properly local or municipal in their nature, but which are, in fact, state powers, exercised by local officers, within defined territorial limits.' Dillon on Municipal Corporations, Vol. 1, p. 62.

"It was with this in mind that the court passed upon the question presented in 3 Pennewill's Delaware Reports in the case of State, ex rel. v. Churchman, at p. 361, where it was determined that the city judge of a municipal court for the city of Wilmington is an officer of a municipal corporation. There the jurisdiction of the city judge of the municipal court for the city of Wilmington was in addition to the sole original jurisdiction in all cases of violations of any of the laws, ordinances, regulations, or Constitution of the city, and criminal jurisdiction for state offenses.

"The municipal court of Wilmington was established by authority of Section 1 and Section 15 of Article IV of the Constitution of the state of Delaware which provided that:

" 'The General Assembly may, with the concurrence of two-thirds, establish courts other than the courts specifically named and prescribe(d) the criminal jurisdiction that might be conferred by the General Assembly upon such inferior courts.'

"In determining that the judge of that court was a municipal or local officer and not a state officer, Grubb, J., used the following language:

" 'Does the fact of a municipal corporate officer being clothed and charged with powers and duties of a public, and not merely corporate nature, under the provisions of a charter or of a special or general state law, make him the less a corporate officer? The theory and ground upon which every municipal corporation is created is that it is an instrumentality or agency of the state to aid the state in the civil government of that portion of its territory embraced within the prescribed corporate limits. All municipal corporations are emanations of the supreme law making power of the state and created exclusively for the public advantage (Coyle v. McIntyre, 7 Houst., 89, 96.) Therefore, in legal contemplation, every such corporation is a *public* instrumentality or agency created and empowered solely for public purposes and charged with duties in behalf of the state to which it owes its

being, and, consequently, as it can act only through its officers, agents and servants all these are, logically speaking, public or state agencies. And yet they have uniformly been regarded in this state as officers and servants of such municipal corporations and also elsewhere unless there were special constitutional or statutory provisions, or reasons of state policy or policy to the contrary.'

"And Chief Justice Nickolson in the principal opinion in the case says:

" 'As Dillon phrases it, "A municipal corporation proper is created mainly for the interest, advantage and convenience of the locality and its people; a county organization is created almost exclusively with a view to the policy of the state at large. But it is impossible for municipal agencies not to be agents of the state as well. With reference to the police, see the remarks of the court in Mayer, etc., v. Vandergrift, 1 Marbel, 18. Its agencies and officers, however, do not on that account cease to be corporate officers and corporation agents, and they can not be considered to lose their character of officers of the corporation by reason of their exercise of powers and their performance of duties other than corporate. If such were the test to be applied to their officers, municipal corporations would be found to possess very few.'

"The language of these two learned judges seems to us to be very applicable to the case at bar, and as we do not find any special constitutional or statutory provisions or reason of state polity to the contrary in this state, our opinion is that as a judge of such court the relator is a municipal and not a state officer."

It will be noted that although the Supreme Court in the Stanley case, supra, was concerned with the status of a police judge, the officer involved in the Thompson case was a judge of the municipal court created under the provisions of Section 1579-46 et seq., General Code.

In the case at hand we are of course concerned with an officer of a municipal court rather than of a police court. In view of the extent to which the Supreme Court of Ohio has apparently gone in its approval of the decision in the Thompson case, it would appear to be settled in Ohio that a judge of a municipal court is, at least to some extent, an officer of the municipal corporation in which such court is established.

It may be noted at this point that in some instances a municipal court created by the new municipal court act, Section 1581 et seq., General Code, is authorized and required to exercise jurisdiction in territory outside the geographical limits of the municipal corporation in which

it is established and, in several cases, in other municipal corporations within such territory. This situation did not exist with reference to the Dayton municipal court, which was the subject of consideration in the Thompson case. As pointed out by Snediker, J., in that case in his quotation from Dillon on Municipal Corporations, it is the constant practice of the states to make use of the corporate instrumentality, or of its officers, to exercise powers, perform duties, and execute functions that are not strictly or properly local or municipal in their nature, but which are state powers exercised by local officers within defined territorial limits. The decision in the Thompson case thus appears to be based on the theory that the exercise by municipal officers of state powers, in addition to municipal powers, does not necessarily constitute such officers as state officers. In this view of the matter, I can perceive no logical reason why the exercise by such municipal officers of state powers outside the territorial limits of the municipal corporation in which the court is established would have any different effect. Our next problem, therefore, is to ascertain within what municipal corporation a particular court is "established."

At this point we may properly inquire into the relationship of a particular municipal court to a municipal corporation which is located within the court's territorial jurisdiction but which is not the most populous city therein. The several courts are, of course, established and located in the most populous city in such territory and bear the name of such city, but in some instances, as already noted, they exercise jurisdiction in cases involving violations of the ordinances of other municipalities in the territory.

The rationale of the Thompson decision appears to be that municipal judges are municipal officers in the sense that they exercise municipal functions, i.e., in dealing with cases involving a violation of a municipal ordinance. If this be the case it can hardly be supposed that the "A" Municipal Court, when dealing with a case involving a violation of an ordinance of "B" municipality, is acting therein as an agency of "A" municipality. Rather, it must be supposed in such case that the court is acting as an agency of the municipality the ordinance of which has been violated.

Accordingly, although freely conceding that municipal courts are in a very real and substantial sense agencies of the state, I must conclude that in a limited sense such courts are municipal agencies, and the judges thereof municipal officers to the extent that they are engaged in disposing

of cases involving violation of municipal ordinances. I conclude further that in cases where a particular municipal court is dealing with a case involving a violation of an ordinance of a municipality other than the most populous city in such court's territorial jurisdiction, the judge of such court is, in a limited sense, an officer of such municipality rather than of such most populous city.

All that has been said above with respect to the status of a judge of a municipal court as an officer of a municipal corporation in which such court is established is equally applicable to the office of clerk of a municipal court for the reason that both are officers within such court. It is my conclusion, therefore, in particular cases, that the office of clerk of a municipal court established under the provisions of Section 1610, General Code, is, in a limited sense, an office of the municipal corporation the ordinance of which is being applied.

This being the case, we may next proceed to inquire what general provision may be found in the statute relative to the disposition of funds coming into the hands of municipal officers. Such a general statutory provision is found in Section 4300, General Code, which relates to the office of treasurer of a municipal corporation. This section reads as follows:

> "The treasurer shall receive and disburse all funds of the corporation and such other funds as arise in or belong to any department or part of the corporation government."

This, of course, is a very general provision and it is obvious that where a special statutory provision is made with respect to the disposition of funds, such special provisions would apply rather than the general provisions in Section 4300, supra. As we have noted, however, there is a complete absence of any provision in the municipal court act with respect to certain kinds of public funds which, in substantial amounts, will come into the custody of the clerk of a municipal court. There is a clearly expressed intention in Section 1610(F), supra, that the clerk shall disburse such funds to the proper persons or officers each month, and it cannot therefore have been the intention of the General Assembly that any of such funds should be held by the clerk indefinitely for want of a statutory provision designating the person or officers among whom such funds are to be distributed. In this situation it must be concluded that the general provisions noted in Section 4300, supra, are applicable.

The application of the provisions of this section in cases involving a violation of a municipal ordinance presents little difficulty. If the clerk is deemed, in each case, to be an officer of the municipality the ordinance of which has been violated, it follows that all moneys coming into his custody with respect to such cases, the distribution of which is not otherwise provided for, should be paid to the treasurer of such municipality.

The application of Section 4300, supra, in cases involving a violation of state law is not so simple. In such cases, under the reasoning in the Thompson case, the court is a municipal agency exercising a state function. The question thus becomes one of ascertaining the municipality of which the court is an agency in cases where there are two or more municipal corporations located within the court's territorial jurisdiction.

It will be observed that municipal courts are, in all instances, established and located in the most populous city in such territory, and that they bear the name of such most populous city. Moreover, under the provisions of Section 1615, General Code, the legislative authority of such most populous city is required to provide suitable accommodations for such court and to bear the burden of certain very substantial items of expense incident to the operation of the court. For these reasons it can fairly be said that the court, in the sense that it is a municipal agency, is primarily the agency of the most populous city in the territory in which it has jurisdiction, and is the agency of another municipality therein only to the extent that it deals with cases involving violations of ordinances of such other municipality. For these reasons I conclude that in a case involving a violation of a state law, the provisions of Section 4300, General Code, should be applied so as to require payment by the clerk to the treasurer of the most populous city within a municipal court's territorial jurisdiction of all moneys coming into custody of the clerk in connection therewith, the distribution of which is not otherwise provided for by law. This conclusion is, of course, in complete harmony with the notion that where a considerable burden of expense has been imposed on such city it can fairly be inferred that the General Assembly would intend to provide a partial alleviation of that burden in the manner which I have indicated.

It should, of course, be always borne in mind that where any special statutory provision is made for the distribution of funds in the custody of the clerk of a municipal court, such funds as earlier indicated herein should be distributed as therein directed, and only such as thereafter remain should be distributed to the proper municipal treasury under the provisions of Section 4300, General Code.

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

1. The provisions of Section 1610(F), General Code, do not have the effect of repealing by implication the provisions of Section 1183-4, General Code.

2. In cases involving a violation of a municipal ordinance, to the extent that statutory provision is not otherwise made for the disposition of moneys coming into the custody of the clerk of a municipal court, including fees, penalties, bail, and other moneys payable to any officer of the court, the clerk should, under the provisions of Section 4300, General Code, pay such moneys into the treasury of the municipality the ordinance of which was violated.

3. In cases involving a violation of a state law, to the extent that statutory provision is not otherwise made for the disposition of moneys coming into the custody of the clerk of a municipal court, including costs, fees, penalties, bail, and other moneys payable to any officer of the court, the clerk should, under the provisions of Section 4300, General Code, pay such moneys into the treasury of the most populous city in the territory within which such court exercises jurisdiction.

Respectfully,

C. WILLIAM O'NEILL
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