

cate that these officers may select from a list of securities including obligations of any taxing authority other than those of the city making the investment.

Specifically answering the questions which you have raised in your letter and the communication of the village solicitor, it is my opinion that:

1. Sections 4296-1, et seq., General Code, relate solely to the investment of moneys belonging to the treasuries of cities not required for immediate use, and have no application to such moneys belonging to treasuries of villages.

2. Under the provisions of these sections, such moneys may only be invested in obligations of the city in the treasury of which they are held.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

2034.

JUSTICE OF THE PEACE—MAY LEGALLY ENGAGE IN COLLECTION BUSINESS, SO LONG AS HIS FEES DO NOT RESULT FROM SUITS FILED IN HIS COURT.

*SYLLABUS:*

1. *There is no provision of law prohibiting a justice of the peace from engaging in the collection business, and he may accept fees for collections made, even though such collections be effected through court action in any court other than his own.*

2. *Where a justice of the peace engaging in the collection business, effects a collection by means of suit brought in his own court and receives a fee therefor, he is receiving a reward other than is provided by law, for the performance of his official duties, in violation of Section 12916 of the General Code.*

COLUMBUS, OHIO, June 26, 1930.

HON. DON. ISHAM, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—Your office has requested an opinion upon the following:

“A justice of the peace has been collecting or receiving a commission from the plaintiffs in various cases tried in his court, receiving usually a commission of 25% or more on the amount of the judgment collected.

Section 12916, G. C., reads as follows:

‘Whoever, being an officer under the constitution or laws of this state, knowingly asks, demands or receives a reward, other than is allowed by law, to execute his official duty, or knowingly charges, asks, demands or receives greater fees or costs than are allowed by law for such official duty, or engages in, or permits another in his employ to engage in a business, which by reason of his office, he is prohibited from doing, shall be fined not more than two hundred dollars or imprisoned not more than twenty days, or both, and forfeit his office.’

In the case of *State vs. Mackelfresh*, 5 N. P. (N. S.) 43, 17 D. 709, it is held that ‘A justice of the peace, engaged in the business of a collecting agency, is not punishable under Section 12916, G. C.’ Reading of this decision shows that in this particular instance the justice was acting as a collection agency and that the collections were not made as suits upon his dockets, but simply as collections.

Question: Would a justice of the peace be violating Section 12916, G. C., by receiving a commission on cases filed in his court and reduced to judgment, where he was acting in his official capacity as justice of the peace?"

In the opinion of Bromwell, J., in the Mackelfresh case to which you refer there is a comprehensive discussion of the status and powers of a justice of the peace with reference to the subject of collections. It was held in said case, as disclosed by the first branch of the headnote:

"An indictment charging that the defendant engaged in the business of a collecting agency, which he was prohibited from doing by reason of his office of justice of the peace, does not charge an offense under Rev. Stat. 6909 (Lan. 10544), inasmuch as there are no common law offenses in Ohio, and there is no statute prohibiting a justice of the peace from engaging in said business; nor does his oath of office amount to such a prohibition."

Since the rendition of said opinion above referred to it has generally been held that Section 12916, which you quote, does not inhibit a justice of the peace from acting in the capacity of a collector and charging a fee therefor. However, your question is suggested on account of a justice entertaining a suit on behalf of the plaintiff whom he represents in the capacity of a collector and retaining the fees collected for his services in connection with the suit. In said opinion, what is now Section 1771 of the General Code was considered, which section provides:

"No such justice of the peace, clerk, deputy, or deputies may act as counsel, agent or attorney for a party in any matter, suit or proceeding in such courts."

The court concluded that said section had application only to justices of the peace of Columbus, Ohio, and the fact that the legislature saw fit to enact such legislation for said city indicated that in the absence of such a statute a justice could engage in such undertaking.

In considering the Mackelfresh case, however, it must be borne in mind that the court was dealing with a specific indictment which charged the defendant with engaging in a business which, by reason of his office, the justice of the peace was prohibited from doing. The correctness of the conclusion of the court that the statutes do not inhibit such business, cannot be doubted. The court did not, however, consider whether other pertinent provisions of Section 12916 of the Code might be violated in the course of business of a collection agency. It nowhere appeared in the case that the justice was collecting a commission upon amounts reduced to judgment in his court. Before finally concluding upon your question, it is proper to assume that the collection contract of the justice concerning which you inquire was of the ordinary type which made the payment of fees contingent upon the collection of the claim. Without doubt, the justice may legitimately pursue debtors and, if successful, collect fees therefor, so long as these collections are made without suit. Furthermore, the justice may properly bring an action and enforce collection in any court other than his own. Where, however, he himself is the court, it remains to be seen whether he is not, in receiving a fee for a collection effected in a suit pending before him, receiving "a reward other than is allowed by law, to execute his official duty," within the inhibition of Section 12916 of the Code.

It is to be presumed that the justice in his capacity of a collector has exhausted his resources and been unable to collect the claim without suit. It accordingly follows necessarily that the processes of his court constitute the means whereby the collection is effected. To draw an analogy from the law of negligence, the duties

which he performs as a justice constitute the "proximate cause" of the collection. Such being the case, it seems inevitable that he is receiving a reward other than is allowed by law for the performance of his official duties when he receives a commission upon amounts collected through his official efforts. It must be borne in mind that, once an action is brought in the justice court, the duty is imposed by law upon the justice to proceed to render judgment and to have execution issued thereon, and his fees for these services are such only as are prescribed by law. These duties he owes to any member of the public, and it certainly is contrary at least to the spirit of the law if one member of the public, by the payment of additional amounts, may secure better efforts in the performance of those official duties.

I am not unmindful of the well established rule that criminal statutes are to be strictly construed and will not be extended beyond their plain import. I feel, however, that instances such as you cite are plainly a violation of the statute in question.

Accordingly, by way of specific answer to your inquiry, I am of the opinion that:

1. There is no provision of law prohibiting a justice of the peace from engaging in the collection business, and he may accept fees for collections made, even though such collections be effected through court action in any court other than his own.

2. Where a justice of the peace engaging in the collection business, effects a collection by means of suit brought in his own court and receives a fee therefor, he is receiving a reward other than is provided by law, for the performance of his official duties, in violation of Section 12916 of the General Code.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

2035.

VILLAGE SCHOOL DISTRICT—REQUIREMENTS TO BECOME EXEMPTED VILLAGE SCHOOL DISTRICT OUTLINED—SPECIAL FACTS INVOLVING CREATION OF NEW SCHOOL DISTRICT DISCUSSED.

*SYLLABUS:*

*For a village school district to become an exempted village school district, it is necessary that it contain a village that had a population of three thousand or more, as shown by the last Federal census, or that the procedure outlined in Section 4688-1, General Code, be complied with.*

COLUMBUS, OHIO, June 26, 1930.

HON. JESSE K. GEORGE, *Prosecuting Attorney, Steubenville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"On July 12, 1929, the Director of Education of the State of Ohio recommended to the Jefferson County Board of Education the consolidation of the Grover Village School District, Warren Special District and Warren Township Rural School District, and that the pupils of the Deyormanville and the Lincoln Districts of the Warren Township Rural School District be sent to the Dillonvale Village School District.

Pursuant to such recommendation, the county board created a new district under the name of Warren Consolidated District, consisting of the territory embraced in said Grover Village District, Warren Special District and Warren Township Rural District, but did not then pass upon the recom-