

the peace as to remitting or suspending the payment of a fine. The syllabus of that opinion reads as follows:

"A justice of peace has no authority to remit or suspend the payment of a fine for a violation of Sections 12604 et seq., of the General Code. However, he may suspend the imposition of sentence and place the defendant on probation under control and supervision of a probation officer with the condition that the costs of prosecution be paid by the defendant."

No statutes are found which permit a justice of the peace to remit or suspend all or a part of a fine which has been finally adjudicated. He may suspend execution of sentence pending the hearing on a petition to review the case and may suspend imposition of sentence and place the defendant on probation under the control and supervision of a probation officer with the condition that the costs of prosecution be paid by the defendant and upon the termination of the probation period dismiss the defendant as provided by Sections 13452-1 to 13452-5, General Code.

I would therefore say, in specific answer to your question, that a justice of the peace has no authority to suspend or remit the payment of any fine imposed by the justice of the peace upon any defendant for the commission of any misdemeanor in any case which has been fully adjudicated. However, he may suspend the imposition of sentence and place the defendant on probation under control and supervision of a probation officer with the condition that the costs of prosecution be paid by the defendant and upon the completion of the probation period and the payment of costs, dismiss the defendant.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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859.

MARION MUNICIPAL COURT — PROCESSES THEREOF MAY BE SERVED BY SHERIFF OF MARION COUNTY ONLY IN CIVIL CASES—LIMITED TO SERVICE IN COUNTY OUTSIDE LIMITS OF CITY AND TOWNSHIP OF MARION—ENTITLED TO STATUTORY FEES THEREFOR PAYABLE INTO COUNTY TREASURY.

**SYLLABUS:**

*The sheriff of Marion County may serve the processes of the Marion Municipal Court only in civil cases and then only where such service is made in Marion County but outside the limits of the city and township of Marion. The sheriff serving such processes is entitled to the statutory fees for such services which are to be paid into the county treasury.*

COLUMBUS, OHIO, May 22, 1933.

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

GENTLEMEN:—Your request for my opinion reads as follows:

"Section 1579-761, et seq., provides for a Municipal Court in the City of Marion.

It would seem from the various provisions of this law that the Municipal Court has authority to issue its processes to the sheriff of Marion County in either civil or criminal cases.

QUESTION: In the event that the sheriff serves processes issued from this Court in either civil or criminal cases, are the fees earned by him payable to him by the clerk of the court, and by him paid into the county treasury as earnings of his office; or are such fees, when collected, to be paid into the treasury of the City of Marion?"

As you state in your letter, sections 1579-761, et seq., provide for a municipal court at Marion, Ohio. It is necessary that the legislation establishing each municipal court be examined in order to determine what, if any, special provisions have been made regarding the serving of processes.

Section 1579-775, General Code, pertaining to the commencing of actions, reads in part as follows:

"All summons, writs and process in the municipal court shall be served and returned by the bailiff, or by publication, in the same manner as is now, or may hereafter be, provided by law for the service and return of summons, writs and process in the court of common pleas. Where the manner of service is not so provided for, service and return may be made in the same manner provided by law for the service and return of summons, writs and process issued by police court or a justice of the peace."

Section 1579-800, General Code, reads in part as follows:

"The bailiff shall be appointed by the judge of the municipal court, and hold office during the pleasure of the court. He shall perform for the municipal court, services similar to those usually performed by the sheriff of courts of common pleas, and by the constable of courts of justices of the peace. \* \* \* Every police officer of the city of Marion shall be ex-officio deputy bailiff of the municipal court and shall perform from time to time such duties in respect to cases within the jurisdiction of said court as may be required of them by said court or the clerk thereof."

Section 1579-768, General Code, reads as follows:

"In any action or proceedings of which the municipal court has jurisdiction of the subject matter, when the defendant, or some one of the defendants, resides in the city or township of Marion, the municipal court shall have jurisdiction, and summons, writs and process may be issued to the sheriff of any county against one or more of the defendants."

It would appear from a reading of the sections involving the Marion Municipal Court Act that the bailiff should serve the processes of that court. If there

is any authority for the sheriff to serve processes from that court, it would be by virtue of section 1579-768, supra. In considering the authority of the sheriff to serve processes in Marion County, three situations arise.

1. The serving of processes within the city of Marion and Marion Township.

2. The serving of criminal processes in the county of Marion but outside of the city and township of Marion.

3. The serving of civil processes in the county of Marion but outside of the city and township of Marion.

I shall consider these in the order stated.

As to the first situation, an examination of the Marion Municipal Court Act, as well as other municipal court acts, compels the conclusion that the bailiff of the municipal court of Marion is the proper official to serve such processes. The sheriff of Marion County would certainly have no authority to serve the processes of the municipal court of Marion, whether they be civil or criminal processes, within the limits of the city and township of Marion.

As to your second situation, I should like to call your attention to an opinion found in Opinions of the Attorney General for 1928, Vol. I, page 821, where it was held as disclosed by the syllabus:

“The Municipal Court of Newark (Sections 1579-367 to 1579-415, both inclusive, of the General Code) is without authority to issue warrants directed to the sheriff of Licking County, Ohio. Such warrants should be directed to the bailiff or to any police officer of the City of Newark, Ohio.”

The Attorney General in that opinion based his conclusion upon section 1579-381, General Code, declaring that this section made it the duty of the municipal court of Newark to direct its warrants to the bailiff or to a police officer of the city of Newark. This section reads in part as follows:

“One bailiff shall be appointed by the judge of the Municipal Court. He shall perform for the Municipal Court, services similar to those usually performed by the bailiff, and sheriff for the Court of Common Pleas, and by the constable of the courts of justice of the peace. \* \* \*”

While section 1579-388 of the Newark Municipal Act was not mentioned in the opinion, it is significant to note that it provides for the Newark Act what section 1579-768, General Code, supra, does for the Marion Act. Section 1579-388, supra, reads in part as follows:

“In all actions and proceedings where one or more defendants resides or is served with summons in the township of Newark, or the city of Newark, Ohio, and, in all actions or proceedings of which the municipal court has jurisdiction of the subject matter when the defendant, or some of the defendants reside or are served with summons in the township of Newark, or the city of Newark, Ohio, the municipal court shall have jurisdiction, and summons, writs and process may be issued to the sheriff of any county in the state of Ohio, against one or more defendants, and in any action or proceeding of which the municipal court has jurisdiction of the subject matter, when one or more of the

defendants may, under the laws of the state of Ohio, be summoned from any county of the state into the county of Licking in which the municipal court of Newark is located."

I also call your attention to an opinion of this office which appears in Opinions of the Attorney General for 1925, page 550, the syllabus of which reads:

"The Municipal Court of Portsmouth may not legally issue warrants directed to the sheriff of the county or constable of a township. Such warrants should be issued to the bailiff or a deputy bailiff provided for said court."

From a reading of these opinions, it appears that the bailiff is the proper official to serve warrants, whether it be in the city of Marion or outside of the city but within the county limits. It is therefore my opinion that the sheriff may not serve warrants directed from the municipal court of Marion.

I come now to the third situation involving the serving of civil processes in the county of Marion but outside of the city and township of Marion. Under section 1579-767, the municipal court of Marion has jurisdiction within the limits of the city of Marion and "in all actions and proceedings where one or more defendants resides in the city or township of Marion." In this connection, I would like to call your attention to the case of *State, ex rel. Budget Plan Finance Company vs. Greer*, reported in 8 O. L. Abs. 536, the Court of Appeals for the Seventh District, the syllabus of which is as follows:

"Municipal Court of Youngstown has jurisdiction to issue summons for persons residing in Mahoning County outside of the City of Youngstown, when such non-residents are joint defendants with a defendant living within the City of Youngstown."

In this case an action of mandamus was brought seeking to compel the bailiff of the municipal court of Youngstown to serve summonses on certain defendants. The court in the opinion used the following language:

"We think the court had jurisdiction to cause summons to be served on the others and adjudicate and determine the action that was brought against them, and that the bailiff of this court should have made an attempt to serve these parties at their residence or home in Campbell.

The writ requiring the bailiff to serve these parties defendants whom it is claimed reside in Campbell may issue."

In view of the decision in this case, it is apparent that in this third situation the bailiff may serve civil processes in the county of Marion but outside of the city and township of Marion. There is nothing in the 1928 opinion or the 1925 opinion or the court of appeals case which would prevent the sheriff of Marion County from serving civil processes in the county of Marion but outside of the city and township of Marion. In fact, a consideration of section 1579-768, *supra*, would support the conclusion that the sheriff might also serve civil processes in the county of Marion when one or more of the defendants resides in the city or township of Marion.

In view of the above, I am compelled to the conclusion that the sheriff of Marion County is authorized to serve processes from the Marion municipal court. Whether or not the county should receive the fees in the event the sheriff has served such processes, depends upon the authority of the sheriff to serve them. It is well settled that a public officer cannot receive any additional compensation, by reason of the fact that additional duties are imposed upon him or assumed by him, unless the legislature has expressly provided that such additional compensation may be paid. *Anderson vs. Commissioners*, 25 O. S. 13; *Swartz vs. Commissioners*, 54 O. S. 669; *Rogers vs. Cincinnati*, 6 O. A. 218.

In view of the above, and in specific answer to your question, it is my opinion that the sheriff of Marion County may serve the processes of the Marion Municipal Court only in civil cases and then only where such service is made in Marion County but outside the limits of the city and township of Marion. The sheriff serving such processes is entitled to the statutory fees for such services which are to be paid into the county treasury.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

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860.

OFFICES INCOMPATIBLE—DEPUTY COUNTY AUDITOR WHO IS DEPUTY SEALER OF WEIGHTS AND MEASURES CANNOT BE MEMBER OF COUNTY BOARD OF ELECTIONS SIMULTANEOUSLY—DEPUTY SEALER OF WEIGHTS MAY BE MEMBER OF COUNTY BOARD OF ELECTIONS.

*SYLLABUS:*

1. *A deputy county auditor who is also acting as deputy sealer of weights and measures may not hold the office of member of a county board of elections simultaneously.*

2. *A deputy sealer of weights and measures may hold the office of member of a county board of elections at the same time, providing it is physically possible for one person to transact the duties of such office and position simultaneously.*

COLUMBUS, OHIO, May 23, 1933.

HON. F. MERCER PUGH, *Prosecuting Attorney, Wauseon, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent communication which reads as follows:

"I would like to submit the following questions for your consideration and decision in regard to section 4785-16 or any other sections of the Code having a bearing on these questions:

(1) Whether a person holding the position of deputy auditor, deputy sealer of weights and measures is compatible to the position of being a member of the County Election Board.