

1160.

JUSTICE OF PEACE—WHERE DESIGNATED TO PERFORM  
JUDICIAL DUTIES OF MAYOR IN CRIMINAL MATTERS  
—SECTION 4549 G. C.—MAY NOT RETAIN AS COMPEN-  
SATION COSTS COLLECTED IN ORDINANCE CASES.

SYLLABUS:

*A justice of the peace who has been designated to perform the judicial duties of a mayor in criminal matters under the circumstances set forth in section 4549, General Code, may not retain costs collected in ordinance cases as compensation for services so rendered.*

COLUMBUS, OHIO, September 9, 1939.

HON. G. L. SCHILLING, *Prosecuting Attorney, Wilmington, Ohio.*

DEAR SIR: I am in receipt of your request for my opinion on the following question:

“Can a justice of the peace designated by the mayor of a city as provided by Section 4549, General Code, retain costs in ordinance cases as compensation for his services?”

The judicial functions of the mayor of a city or village are contained in sections 4527 to 4566, inclusive, General Code. Therein are set forth provisions relative to powers, duties and limitations of such officer when acting in a judicial capacity. Section 4549, General Code, which contains the powers of mayors in criminal matters, provides as follows:

“The mayor shall have, within the corporate limits, all the powers conferred upon the sheriffs to suppress disorder and keep the peace. He shall award and issue all writs and process that may be necessary to enforce the administration of justice throughout the corporation, and for the lawful exercise of his jurisdiction, according to the usages and principles of law. He shall subscribe his name and affix his official seal to all writs, process, transcripts, and other official papers. In cities having no police judge in the absence or during the disability of the mayor, he may designate a justice of the peace to perform his duties in criminal matters, which justice shall, during the time, have the same power and authority as the mayor.”

It will be noted, *inter alia*, that the above quoted section allows the mayor of a city which has no police judge to appoint a justice of the peace to perform his duties in criminal matters in his absence or during

his disability. In view of that provision, you inquire whether a justice of the peace who has been so designated by a mayor may retain the costs collected in ordinance cases as compensation for services rendered. Section 4270, General Code, reads as follows:

“All fines and forfeitures in ordinance cases and all fees collected by the mayor, or which in any manner come 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 money 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. At the first regular meeting of council in each and every month, he shall submit a full statement of all money 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.”

Therein lies specific statutory authority which obligates a mayor to pay into the municipal treasury all monies which come into his hands arising out of ordinance cases tried before him. In the case of *State, ex rel. Nead, v. Nolte*, 111 O. S. 486, the Supreme Court of Ohio had occasion to interpret section 4270, General Code, as it then existed. Since that decision, said section was amended (112 O. L. 141), but changes resulting therefrom are not material to the instant question and in nowise affect the opinion in the *Nolte* case. In said case, the court speaking through Marshall, C. J., held at page 497:

“The true interpretation of Section 4270, General Code, is therefore, that in all state cases the mayor of a city or village is entitled to hold the legal fees taxes in his favor; the same not having been included within the language of the latter part of the section, which makes provision for payment of certain moneys into the county treasury. As to all ordinance cases, the fees taxed in favor of a mayor or marshal must be paid into the village or city treasury.”

When a mayor designates a justice of the peace to perform his duties in criminal matters, the justice of the peace so chosen is placed in the identical position of the mayor and is clothed with the same power and authority and is charged with the performance of the same duties as the mayor himself. He certainly cannot be said to be in any better position

than the mayor who appointed him. As explained above, the mayor may not retain costs in ordinance cases as compensation for services rendered. It clearly follows, therefore, that a justice of the peace designated by a mayor may not retain such costs.

The position taken by me in the instant opinion is further strengthened by the well recognized rule applicable to public officers to the effect that their right to compensation rests entirely upon statutory enactment. That rule is contained in 32 O. Jur., page 1011, in the following language:

“It is well settled in Ohio that a public officer is not entitled to receive pay for services out of the public treasury unless there is some statute authorizing the same. In other words, compensation is not allowed by implication. Services performed for the public, where no provision is made by statute for payment, are regarded as a mere gratuity or as being compensated by the fees, privileges and emoluments accruing to such officer in matters pertaining to his office. The fact that a duty is imposed upon a public officer will not be enough to charge the public with an obligation to pay for its performance, for the Legislature may deem the duties imposed to be fully compensated by the privilege and other emoluments belonging to the office or by fees to be charged and collected for services connected with such duty or services and hence, provides no direct compensation therefor to be paid out of the public treasury.”

A careful examination of the statutory provisions governing the question at hand fails to reveal any authorization which would permit a justice of the peace designated to perform the duties of a mayor under circumstances contained in section 4549, supra, to retain costs collected in ordinance cases as compensation for his services. In view of the absence of any statutory authority and, furthermore, in the light of what has been said earlier in this opinion, I am constrained to the view that a justice of the peace who has been designated to perform the judicial duties of a mayor in criminal matters under the circumstances set forth in section 4549, supra, may not retain costs collected in ordinance cases as compensation for services so rendered.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*