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1. MUNICIPAL COURT—DUTY OF CLERK OF VILLAGE WITHIN TERRITORY OF COURT TO ASCERTAIN ACCURACY OF CLAIMS PRESENTED FOR PAYMENT—CLAIMS INCLUDED FOR COMPENSATION OF OFFICERS AND EMPLOYES OF COURT—SECTION 4285 G.C.
2. CLERK UNDER DUTY TO MAKE CALCULATION REQUIRED BY SECTION 1591 G. C.—MUST ASCERTAIN PROPER SHARE OF COMPENSATION TO BE BORNE BY VILLAGE.
3. JUDGE OF MUNICIPAL COURT—TO SOME EXTENT IS AN ELECTED OFFICER OF EACH MUNICIPAL CORPORATION LOCATED IN TERRITORY OF COURT—HE MAY ELECT TO BECOME MEMBER OF PUBLIC EMPLOYES RETIREMENT SYSTEM—HAS RIGHT TO REQUIRE MUNICIPAL CORPORATION TO MAKE EMPLOYER CONTRIBUTIONS—SECTIONS 486-32 ET SEQ., 486-48 G.C.
4. CLERK OF MUNICIPAL COURT—TO SOME EXTENT IS OFFICER OF EACH MUNICIPAL CORPORATION LOCATED WITHIN TERRITORY OF COURT—PUBLIC EMPLOYEE.

SYLLABUS:

1. Under the provisions of Section 4285, General Code, it is the duty of the clerk of a village located within the territory of a municipal court to ascertain the accuracy of all claims and vouchers presented to him for payment, including claims for compensation of officers and employes of such municipal court.

2. In making such determination, such clerk is under the duty to make the calculation required under the provisions of Section 1591, General Code, to ascertain the proper share of such compensation to be borne by such village.

3. The judge of a municipal court is to some extent an elected officer of each municipal corporation located in the territory of such court, and he may, as such municipal officer, under the provisions of Section 486-48, General Code, elect to become a member of the public employes retirement system with all the rights, privileges and obligations of membership, including the right to have such municipal corporation make, with respect to his membership, the employer contributions prescribed in the public employes retirement act, Section 486-32, et seq., General Code.

4. The clerk of a municipal court is to some extent an officer of each municipal corporation located within the territory of such court, and is a "public employe" of each such municipal corporation as this term is defined in Section 486-32, General Code.

Columbus, Ohio, September 24, 1952

Hon. Creed Jopling Lester, Prosecuting Attorney
Knox County, Mount Vernon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The solicitor of the Village of F has requested an opinion on certain matters concerning the payment of salaries of the Judge and other persons in the recently constituted M Municipal Court.

"Pursuant to the statutes, the auditor of K County has apparently made computation as to the burden to be borne by the city, the county and each of the villages in the county. The Village of F has been reluctant to pay their share of such computation until the following questions have been answered. I am, therefore, referring such questions to your office for your opinion at the earliest possible moment. Your opinion at your earliest opportunity will be appreciated, since the various officials involved are not being paid until such opinion is given.

"Questions for your opinion are as follows, to-wit:

"1. Is the clerk of the Village of F authorized by law to make the requested payments on individual receipts from the employees involved when there has been no official determination by any office of the amounts due the court officials. In this connection the demand referred to above was based upon a computation made by Auditor P for the purpose of arriving at the amount due from K county. This computation does not purport to be a bill or demand from the auditor and the court officials do not certify as to the accuracy thereof.

“2. Can Judge H and Clerk H be considered as employees of the Village of F under the provisions of the Public Employees Retirement Benefit Act and are they persons for whom payments above salary can legally be made by F to the Public Employees Retirement Benefit Fund?

“3. Inasmuch as the salaries of the officials in question are determined by the council of the City of M. does the uniform municipal Court act involve an unconstitutional or illegal delegation of the money spending power of the incorporated Village of F to the City of M, if payment as demanded must be paid?”

With reference to your first question, your attention is invited to the provisions of Section 4283 et seq., General Code. Section 4285 reads as follows:

“The auditor shall not allow the amount set aside for any appropriation to be overdrawn, or the amount appropriated for one item of expense to be drawn upon for any other purpose, or unless sufficient funds shall actually be in the treasury to the credit of the fund upon which such voucher is drawn. When any claim is presented to him, he may require evidence that such amount is due, and for this purpose may summon any agent, clerk or employe of the city, or any other person, and examine him upon oath or affirmation concerning such voucher or claim.”

It is first to be observed that by reason of the provisions of Section 4283, General Code, the word “auditor,” as used in Section 4285, has reference in the case of a village to the village clerk. It is thus the duty of the clerk of the village of F to examine all claims and vouchers presented to him for payment to ascertain whether the same are in fact due. In making this determination the clerk is, of course, under a duty to ascertain that the claims and vouchers so presented are lawful.

In the determination of this legal question, the clerk concerned must of necessity refer to the several provisions in the uniform municipal court act, Section 1581 et seq., General Code, to ascertain the precise amounts due from the village to the several officers concerned. In the case of the judge of the M municipal court, for example, we find the following provision in Section 1591, General Code:

“* * * In territories having a population in excess of twenty thousand, judges shall be subject to section 1706 of the General Code and shall receive as compensation four thousand dollars per annum, plus an amount equal to three cents per capita for the first fifty thousand of the population of the territory; * * *

“In no case shall the compensation of any municipal judge exceed the statutory compensation of a judge of the court of common pleas in the county in which the municipal court is situated, nor shall compensation of a municipal judge exceed ten thousand five hundred dollars except the presiding judge of a municipal court shall receive an additional five hundred dollars and the chief justice of a municipal court shall receive an additional one thousand dollars.

“The compensation of municipal judges shall be paid in semi-monthly installments, three-fifths of said amount being payable from the city treasury and two-fifths of such amount being payable from the treasury of the county in which such city is situated.

“If two or more municipalities are located in the territory, a total of three-fifths of such amount shall be payable by all the municipalities in said territory, payable in proportionate shares from the treasury of each of such municipalities in accordance with the respective populations of the several municipalities. If the territory is located in two or more counties, a total of two-fifths of such amount shall be payable by all of the counties, payable in proportionate shares from the treasury of each of such counties in accordance with the respective populations of the several counties.”

In your inquiry you indicate that the auditor of K county had made a computation under the provisions of Section 1591, supra, of the amounts due the several officers of the court from the county and from the several municipalities within the court's territory. It is evident that if the calculations so made have correctly taken into account the figure representing the population of the county of K, and if such calculations are otherwise mathematically correct, it would be impossible for the clerk of the village of F to arrive at any other result than therein set out. This is not to say, of course, that the clerk of the village of F is not under the duty to check the correctness of such calculation. If, for example, he should not agree with the calculation so made, it would appear to be the clerk's duty to proffer payment of the village's share of the compensation of such officers on the basis of his own calculation, and in the event of a disagreement between the clerk and such officers which could not otherwise be resolved, it would seem that such officers might be compelled to find their remedy in mandamus against the clerk.

In your inquiry you state, referring to the county auditor's computation, that “this computation does not purport to be a bill or demand * * *.” In this statement I fully agree. It should be pointed out, however, that

the village clerk, under the provisions of Section 4284, General Code, is authorized to "prescribe the form of accounts and reports to be rendered to his department" and since he is authorized under the provisions of Section 4285, General Code, to examine any claim presented to him for accuracy, he would be acting within his statutory authority by prescribing the form in which the court officers concerned were required to present to him their vouchers or claims for compensation due them. Of course, if such officers and employes do not present any claim for compensation, they could scarcely be heard to complain if payment of such were not made.

It is evident that in certain instances where several municipal court officers are receiving compensation from numerous political subdivisions within the court's territory, a considerable amount of bookkeeping and accounting will be involved. Whether such work could be lessened in such situations by the execution of a contract between the county and the several municipalities concerned, under the provisions of Section 2450-2, General Code, is a question which the authorities of the several subdivisions concerned in the instant case may possibly think it proper to examine.

As to your second question, it should be first noted that the definition of "public employe," as set out in Section 486-32, General Code, excludes elective officers. Since provision is made in Section 1588, General Code, for the election of the judge of the M municipal court, the incumbent of such office could not be deemed to be included within such definition, and in the ordinary case no contributions to the public employes retirement system would be necessary with respect to such officer. However, it is to be observed that elected officials may, under the provisions of Section 486-48, General Code, elect to become members of the public employes retirement system with all of the rights, privileges and obligations of membership.

The clerk of the M municipal court is an appointive officer under the provisions of Section 1610, General Code, the population of the territory of the court being less than 100,000 persons. We may therefore consider whether the clerk of the municipal court established in the city of M, and the judge of such court in the event he should elect to become a member of the retirement system, are in any sense employes of the municipality of F, another municipality located within the territory in which such court exercises jurisdiction.

In my Opinion No. 1132, dated February 8, 1952, I had occasion to consider a somewhat similar question. In that opinion, after quoting

at some length from the decisions in *State ex rel Stanley v. Bernon*, 127 Ohio St., 204, and in *State ex rel Thompson v. Wall*, 17 N. P. (N.S.), 33, I said:

“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.”

In that opinion I was concerned with the disposition of certain funds coming into the hands of the clerk of a municipal court and it was my conclusion that such clerk was an officer of a municipal corporation, other than the city in which the court is established, to such an extent that funds coming into his hands with respect to cases in which an ordinance of such other municipal corporation had been violated should be paid into the treasury of such other municipal corporation.

In the instant case I am impelled to a similar conclusion. Because both the judge and the clerk here involved are clearly exercising to some

extent a function of the municipality of F, and because they receive their compensation in part from such municipality, I conclude without difficulty that they are employes of such municipality within the meaning of such term as used in Sections 486-32 and 486-48, General Code. Authority for membership by judges in a retirement system with respect to each of two governmental unit employes was pointed out, for example, in Opinion No. 850, Opinions of the Attorney General for 1946, p. 240, and I perceive no legal objection to such an arrangement in the instant case.

With respect to your third inquiry, it would appear that the question there presented could arise only with reference to the clerk of the municipal court. In this connection it will be observed that the General Assembly, under the provisions of Section 1591, General Code, has fixed the amount of the compensation to be paid to the judge of such court, the territory of the court having a population in excess of 20,000 persons. Moreover, the compensation of bailiffs and deputy bailiffs is fixed by the court under the provisions of Section 1611, General Code; and as to deputy clerks, the compensation of such employes is fixed by the clerk under the provisions of Section 1610, General Code, and paid only out of the treasury of the most populous city in the court's territory. Thus it is only in the case of the clerk of the court that the compensation of the office is authorized, under the provisions of Section 1610, General Code, to be fixed, in territories having a population of less than 100,000, by the legislative authority of the most populous city in the court's territory.

The question you have presented here is admittedly one having reference to the constitutional validity of this provision in the municipal court act. By long custom and practice attorneys general of Ohio have refrained from expressing any views questioning the constitutional validity of enactments of the General Assembly, and it is my own view that it is not within the province of my office to do so in this instance.

It may be pointed out, however, that it has long been established that municipalities of this state have no power by charter or otherwise to create courts, and that the provision in Section 1, Article IV, Ohio Constitution, relative to the creation of courts, is a special provision which supersedes the general power of local self government as granted in Section 3, Article XVIII, Ohio Constitution. *State ex rel Cherrington v. Hutsinpiller*, 112 Ohio St., 468. Further, it is to be observed that in matters of state-wide concern the state is supreme over its municipalities and may, in the

exercise of its sovereignty, impose duties and responsibilities upon them as arms or agencies of the state. *Cincinnati v. Gamble*, 138 Ohio St., 220.

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

1. Under the provisions of Section 4285, General Code, it is the duty of the clerk of a village located within the territory of a municipal court to ascertain the accuracy of all claims and vouchers presented to him for payment, including claims for compensation of officers and employes of such municipal court.

2. In making such determination, such clerk is under duty to make the calculation required under the provisions of Section 1591, General Code, to ascertain the proper share of such compensation to be borne by such village.

3. The Judge of a municipal court is to some extent an elected officer of each municipal corporation located in the territory of such court, and he may, as such municipal officer, under the provisions of Section 486-48, General Code, elect to become a member of the public employes retirement system with all the rights, privileges and obligations of membership, including the right to have such municipal corporation make, with respect to his membership, the employer contributions prescribed in the public employes retirement act, Section 486-32, et seq., General Code.

4. The clerk of a municipal court is to some extent an officer of each municipal corporation located within the territory of such court, and is a "public employe" of each such municipal corporation as this term is defined in Section 486-32, General Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General