

for a prompt compliance with the law and ultimately cares for the employe. The opposite conclusion would, in my judgment, encourage culpable and wilful disregard of the law and be out of harmony with its purpose.

Perhaps section 1465-75 should be made specific as to when an employe may receive compensation from the fund, or provision be made for compensating the employe and enforcing the award against the employer for the benefit of the fund.

But the law must be construed as it stands and I therefore advise you that where an injury is received by an employe of an employer in default for the payment of his premium under the workmen's compensation law, as amended in 108 O. L., Part II, 1145, the payment of such premium or a judgment therefor does not deprive such employe of the right to bring suit against the employer, or to have an award of compensation made him and to collect the same as provided in section 1465-74 G. C. When the attempt to make collection of the award under such sections fails and not before, such award may be paid from the state insurance fund, the premium of the employer having been paid.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1741.

MAYORS—CITIES AND VILLAGES—CRIMINAL DOCKET--MAY RETAIN FINES TO PURCHASE SAME.

Mayors of cities and villages may retain out of fines or other moneys belonging to the county, coming into their hands in criminal proceedings, the amount paid for a criminal docket.

COLUMBUS, OHIO, December 29, 1920.

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

GENTLEMEN:—Acknowledgment is made of your letter reading thus:

"We are enclosing you herewith copy of communication written to the county auditor of Montgomery county, Ohio, based upon conversation reported to this office by Mr. Bliss, who had consulted some of your force. However, as there is considerable doubt in the mind of the writer upon this point as the preceding opinions of the attorney-general had held just the contrary under the old law, we are respectfully requesting your written opinion upon the following question:

May the mayors of cities and villages retain out of fines or other moneys belonging to the county coming into their hands in criminal proceedings, the amount paid for criminal docket?"

The opinion of the attorney-general to which you refer, is doubtless that which was rendered to your department November 5, 1917 (Opinions of Attorney-General for 1917, Vol. III, p. 2035). The head note of said opinion says:

"Neither a mayor nor a police judge has authority, under section 1742 or any other section of the General Code, to retain a part of the fines or

penalties collected by him to pay for criminal dockets used in the performance of his duties."

Section 1742 G. C. says:

"A justice of the peace may retain out of fines or other moneys belonging to the county coming into his hands in criminal proceedings, the amount paid for a criminal docket and each justice of the peace, except those receiving a salary, may retain out of such fines or other moneys an amount not exceeding twenty dollars for a suitable desk in which to keep the dockets, files, papers, books and documents of his office, which desk shall be the property of the county and shall be turned over by each justice of the peace to his successor. Such justice may expend of such fines and other moneys not exceeding five dollars per annum, for necessary paper, blanks and other stationery for his office, but a justice shall not purchase such desk if he has received a suitable desk from his predecessor. A justice of the peace paying out money for such purposes shall file with the county auditor, at the expiration of his term of office, a sworn itemized statement thereof. In making the annual statement to the auditor as required by law, a justice of the peace, having made such expenditures or having such moneys in his hands contemplated for such purposes, shall include therein the moneys so paid or held by him."

Since said opinion was rendered, H. B. 294, 108 O. L., Part II, p. 1203, has been enacted. Among the sections of the General Code amended by that bill was section 4528 G. C., which, speaking of the mayors of *cities*, says:

"He shall have final jurisdiction to hear and determine any prosecution for a misdemeanor, unless the accused is, by the constitution, entitled to a trial by jury, and his jurisdiction in such cases shall be co-extensive with the county, and in keeping his dockets and files, making report to the county auditor and accounting for fines in state cases, and disposing of unclaimed moneys, he shall be governed by the laws pertaining to justices of the peace."

Another section amended by H. B. 294 was section 4536 G. C., which applies to mayors of *villages*. Said section reads thus:

"He shall have final jurisdiction to hear and determine any prosecution for a misdemeanor unless the accused is by the constitution entitled to a trial by jury. His jurisdiction in such cases shall be co-extensive with the county, and in keeping his dockets and files, making report to the county auditor and accounting for fines in state cases, and disposing of unclaimed moneys, he shall be governed by the laws pertaining to justices of the peace."

We think the language used in sections 4528 and 4536 G. C. is broad enough to include the allowance for purchase of criminal docket provided for by section 1742 G. C., and therefore answer your question in the affirmative.

In the former opinion of this department, one of the arguments advanced for the conclusion therein reached was that section 4270 G. C. spoke of *all* fines being paid into the public treasury without any exception, whereas as to justices of the peace the situation was that the legislature had recognized (section 13429 G. C.)

that there are cases in which a justice of the peace is not required to pay the fines collected by him into the treasury of the county.

This reasoning was, we think, sound at the time said opinion was written. Since then, however, section 4270 G. C. has been amended (H. B. 294, 108 O. L., Part II, p. 1208), and in place of the unqualified provision that "all fines, penalties and forfeitures collected by him in state cases shall be by him paid over to the county treasurer monthly," we have this qualified statement: "*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.*"

Respectfully,
JOHN G. PRICE,
Attorney-General.

1742.

STATE HIGHWAY COMMISSIONER—WITHOUT AUTHORITY TO
ENTER INTO LEASE TO MAINTAIN ADVERTISING SIGNS ALONG
PUBLIC HIGHWAYS AS CONSIDERATION FOR FURNISHING
WARNING SIGNALS.

The State Highway Commissioner is without authority to enter into a lease which provides in substance for the right to maintain advertising signs along the public highways as a consideration for the furnishing of warning signals.

COLUMBUS, OHIO, December 29, 1920.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*

DEAR SIR:—You have recently addressed this department as follows:

"Attached please find lease submitted by the American Gas Accumulator Company. This matter has been submitted to the advisory board, and the advisory board as well as myself were favorably impressed with the plan.

We feel that this company can render a great service to the public providing there are no legal objections to our granting requests contained in the lease. Would be pleased to know about what protection the company would have providing we were to give lease. Am calling this matter to your attention with request that you advise me as to our authority, also as to what protection the company would have in case such lease was executed."

The draft of proposed lease which you submit with your letter relates to the placing upon highways of danger signals, depending for their warning character upon a

"flashing light which will also illuminate words of caution specifying the danger to be guarded against."