

3977

1. MAYOR'S COURT, POLICE OR MUNICIPAL COURT—MONEYS RESULTING FROM FINES, PENALTIES AND FORFEITED RECOGNIZANCES IN STATE CASES—WHEN COLLECTED BY MAYOR OR CLERK OF SUCH COURT AND PAID UNDER SECTION 3056 G. C. TO LAW LIBRARY ASSOCIATION, NOT MONEYS COLLECTED BY MUNICIPALITY—OFFICERS IN MAKING COLLECTION AND DISPOSITION OF FUNDS PERFORM DUTIES IMPOSED BY LAW IN MATTER WHERE STATE HAS EXCLUSIVE INTEREST.
2. MAYOR AND CLERK OF A POLICE OR MUNICIPAL COURT ACT AS AGENTS OF COUNTY WHEN THEY COLLECT AND DISPOSE OF SUCH MONEYS—REFUNDS PROVIDED BY SECTION 3058 G. C. SHOULD BE PAID BY TREASURER OF LAW LIBRARY ASSOCIATION TO TREASURER OF COUNTY.
3. WHERE MONEYS WHICH SHOULD HAVE BEEN PAID TO TREASURER OF COUNTY HAVE BEEN ALLOCATED AND PAID TO TREASURER OF MUNICIPALITY, LEGAL OBLIGATION FOR MUNICIPALITY TO PAY TO COUNTY AMOUNT ERRONEOUSLY ALLOCATED AND DISTRIBUTED.

SYLLABUS:

1. Moneys resulting from fines, penalties and forfeited recognizances in state cases prosecuted in a mayor's court or in a police or municipal court, when collected by the mayor or by the clerk of such court and paid pursuant to the provisions of Section 3056, General Code, to the law library association are not moneys collected by the municipality, but such officers in making such collection and disposition of such moneys are performing duties imposed upon them by the law in a matter in which the state has an exclusive interest.

2. In so far as such moneys are by the general law, except for the provisions of Section 3056, General Code, to be paid into the treasury of the county, the mayor and clerk of a police or municipal court in collecting and so disposing of said moneys are acting as the agents of the county, and the refunds provided by Section 3058, General Code, should as to such funds be paid by the treasurer of the law library association to the treasurer of the county.

3. Where a refund is made by the treasurer of a law library association as provided by Section 3058, General Code, and moneys which should have been paid to the treasurer of the county have been allocated and paid to the treasurer of a municipality, such municipality is under legal obligation to pay to the county the amount so erroneously allocated and distributed to it.

Columbus, Ohio, November 8, 1948

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen :

I have before me your request for my opinion reading as follows :

“We are in receipt of numerous requests from both State Examiners and public officials for information in regard to the correct distribution of money received by a municipal corporation from the County Law Library Association, for the refund of ninety per cent of the unencumbered balance in the County Law Library Association Fund on hand from the preceding year, as provided in Section 3058 of the General Code. Enclosed herewith is a copy of one such letter received from Mr. W. A. Galigher, State Examiner, submitting the question for consideration and clarification.

“Since the money used by the clerks of Mayors and Municipal Courts in making payment to the County Law Library Association pursuant to the allocation made by the County Auditor to each such court, may consist of fines, forfeitures, etc., collected in both ordinance cases that could have been state cases and state cases, as provided in Section 3056, General Code, it becomes necessary for us to seek your advice in determining how the refunds received by a municipality shall be disposed of in view of the provisions of Section 3058, General Code, which call for ‘pro rata’ distribution to the treasurers of the political subdivisions from which such balance was received.

“Inasmuch as the question of making proper distribution of the money received by municipal corporations for refund of the balance on hand from the preceding year by the County Law Library Association, is one of state-wide interest, we respectfully request that you give us your opinion and answer to the following questions :

“QUESTION No. 1—

When the clerk of a Mayor’s or Municipal Court has used moneys received from collections in both ordinance cases that could have been state cases, and state cases; in payment to the Trustees of the County Law Library Association of the amount allocated to such court by the county auditor under authority of Section 3056, General Code, and refund is made by the treasurer of the law library association to the city treasurer based upon the total payments made by said court; how shall the money received on such refund be deposited and distributed by the city treasurer?

“QUESTION No. 2—

If such refund is based upon moneys received for fines, forfeitures, etc., collected in part for violation of state laws, which moneys, were it not for the provisions of Section 3056, General Code, would be paid into the county treasury; is the city required to pay over to the county treasurer the pro rata portion of such refund, as determined by the percentage of state case fines used in paying the original allocation to the law library, or is the city entitled to receive and keep for its own use the entire amount refunded as a result of the contributions made by the Mayor's or Municipal Court to the Law Library Association?”

Section 3056, General Code, reads in part as follows:

“All moneys collected by a municipal corporation, accruing from fines, penalties, forfeited deposits or forfeited bail bonds or forfeited recognizances taken for appearances, by a municipal court, police court or mayor's court for offenses and misdemeanors brought for prosecution in the name of a municipality under a penal ordinance thereof, where there is in force a state statute under which the offense might be prosecuted, or prosecuted in the name of the state, except a portion thereof, which plus all costs collected monthly in such state cases, equals the compensation allowed by county commissioners to the judges of the municipal court presiding in police court, clerk and prosecuting attorney of such court in state cases, shall be retained by the clerk of such municipal, police, or mayor's court, and be paid by him forthwith, each month, to the trustees of such law library association in the county in which such municipal corporation is located. * * *”
(Emphasis added.)

There follow certain provisions limiting the maximum amount that shall be paid from all of the sources above mentioned, to the trustees of a law library association in any calendar year, and also limiting the amount that may be paid by any one of such courts. There is also a provision requiring the county auditor in December of each year, to determine for the next succeeding calendar year the maximum amount to be paid by each such clerk for the next calendar year. With these limitations we are not presently concerned. We may assume that the clerk of a municipal court or of a mayor's court has paid in the full amount that is required of him, or, on the other hand, that he has not paid in all that he has collected and should have paid during the calendar year. In either event, it has been held that the amounts upon which the refunds hereinafter referred to are to be made, are to be based upon the

amounts actually paid during the year. See 1943 Opinions of the Attorney General, page 532; 1944 id., page 658.

In addition to the moneys referred to in Section 3056 supra, as being "collected by a municipal corporation", it is provided by Section 3056-1, General Code, as follows:

"In each county of the state, 50 per cent of all moneys collected by justices of the peace of such county, accruing from fines, penalties, forfeited recognizances, and forfeited cash deposits, unless otherwise distributed by law, shall be paid to the trustees of the law library association of such county by the county treasurer thereof, upon the voucher of the auditor of such county within thirty days after such moneys have been paid into the county treasury by such justices of the peace."

Section 3056-2, General Code, provides:

"In each county of the state, all moneys arising from fines and penalties levied, and from cash deposits, bail bonds and recognizances taken by the common pleas and probate courts of such county, which have become forfeited, on account of offenses and misdemeanors brought for prosecution in such courts in the name of the state, shall be retained and paid monthly by the clerk of such courts to the trustees of such law library associations, but the total sums so paid therefrom shall not exceed \$1250.00 per annum, and when that amount shall have been paid to the trustees of such law library association, in accordance with the provisions of this section, then no further payments shall be required thereunder in that calendar year from the clerks of such respective courts."

In Section 3056-3, General Code, there is a provision that 50 per cent of all moneys arising from fines, penalties, forfeited deposits and forfeited bail bonds and recognizances in prosecutions under the liquor control act and the state traffic laws shall be paid monthly by the treasurer of such county *or* municipality to the trustees of the law library association, with certain limitations as to amount.

But for the provisions of Section 3056 supra, the fines, etc., arising in state cases would, as a general rule, be paid into the county treasury. See Section 4270, General Code, as to mayor's court; Section 13454-4, General Code, as to fines generally. Section 4270 provides that all fines and forfeitures in ordinance cases when collected by the mayor shall be paid into the treasury of the municipality, and further provides:

“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.” (Emphasis added.)

Section 13454-4, General Code, reads as follows :

“Unless otherwise required by law, an officer who collects a fine shall pay it into the treasury of the county in which such fine was assessed, within twenty days after the receipt thereof, to the credit of the county general fund. The treasurer shall issue duplicate receipts therefor, and the officer making the collection shall deposit one of said receipts with the county auditor.”

There are some exceptions to this latter provision but it is unnecessary to consider them in this connection. For the purpose of our problem, we may consider merely those fines, etc., which but for the provisions of Section 3056 above noted, would have been paid into the treasury of the county.

This brings us to a consideration of Section 3058, General Code, which reads as follows :

“On the first Monday of each year, the trustees of the association shall make a detailed statement to the auditor of the county, verified by the oath of the treasurer of the association, of the amount of the fines and penalties so received, and of the money expended by the association.

In the event the total amount received under Sections 3056, 3056-1, 3056-2 and 3056-3 of the General Code during the preceding calendar year covered by such report exceeds the expenditures during the same period, the county auditor shall certify such fact to the trustees of the association, who shall thereupon direct the treasurer of the law library association to refund or repay, pro rata to the treasurers of the political subdivisions from which such balance was received, not less than 90 per cent of any unencumbered balance on hand from the preceding year.”

Note particularly that the refund is to be made “pro rata to the treasurers of the political subdivisions from which the balance was received.” The one question which we have to consider is this: When the mayor of a municipality or the clerk of a municipal court or of a police court have collected money from fines, etc., in state cases and have paid such money to a law library association under Section 3056 supra, can it

be said that that money was "received from" the municipality? Or was it "received from" the county? If it was received from the municipality, then by the clear terms of Section 3058 *supra*, the refund goes to the treasurer of the municipality. If it was received from the county, then the refund is to be to the treasurer of the county.

It is plain that the money in question, originally belonged to the county, and not to the municipality. It is certain also that this money never found its way into the county treasury or into the hands of the county treasurer. It is equally clear that it has never been in the treasury of the municipality. The effect of the law is that while on its way to the county treasury and in the hands of the officer who is charged by law with the duty of collecting it, it is as the statute directs, "retained" by the clerk or the mayor and paid, up to a certain amount to the law library association which under the terms of Section 3054 *et seq.*, General Code, is a quasi public corporation largely subsidized by the county. It is worthy of note that by the provisions of that section, it is contemplated that a law library association which is to receive public support must furnish to all the county officers and the judges of the several courts free use of its library. Further, that the county treasurer is to pay the salary of the librarian, in an amount determined by the judge of the common pleas court. Section 3055, General Code, provides that the county commissioners shall provide it with rooms, preferably in the court house, and with book cases, as well as with heat and light. It is thus evident that the library is a part of the state's judicial system designed for the use of the county in the administration of the criminal procedure of the state, and that it has no relation whatever to municipal affairs.

As to the character of the courts in which those fines, etc., originate, it should be borne in mind that they are not created by the municipalities, and under the ruling in *State ex rel. Cherrington v. Hutsinpiller*, 112 O. S., 468, these inferior courts are matters of state concern, and municipalities are without power either by charter or otherwise, to create any courts or appoint judges therefor. To the same effect see *State ex rel. Ramey v. Davis*, 119 O. S., 596. Hence, we find in a long series of acts of the General Assembly, statutes creating municipal courts or police courts for many cities, with widely varying provisions as to their judges, clerks and other officers. In some of these, the clerk of the court is elected for a stated term and in some he is appointed by the judge and holds at the pleasure of the judge. In some, a portion of the clerk's salary

is to be paid by the county, and in others it is to be paid entirely by the municipality. I find no judicial expression as to whether the clerk is a municipal officer or a state officer, but in the case of *State ex rel. Stanley v. Bernon*, 127 O. S., 204, it was held as to a judge of a police court:

“A judge of the Police Court of the City of Cleveland Heights is an elective municipal officer, whose nomination is governed by the charter of that city.”

It would appear to follow quite certainly that the clerk of a police court or municipal court, however chosen, is likewise a municipal officer. Of course, there could be no question of the status of the mayor as a municipal officer. I do not, however, consider that these conclusions as to the status of these officers are dispositive of the question whether the fines in question collected by them can be said to have been “collected by a municipal corporation.” The general assembly has the right to impose on municipal officers duties not pertaining to the municipality. The supreme court in the case of *Cincinnati v. Gamble*, 138 O. S., 220, held:

“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.”

The law has imposed upon the clerk of a municipal court, and on the mayor as a magistrate, duties with respect to a matter which is distinctly a concern of the state. Apparently the legislature has made these municipal officers collectors of money that belongs to the county and has directed the payment of such money to an institution largely supported by the county. In so doing they are not performing any municipal duty or function. The words “collected by a municipal corporation” used in the opening sentence of Section 3056 *supra*, appear to be solely responsible for the doubt which gives rise to your question, and to the foregoing discussion. In resolving this doubt, we are justified in examining the whole plan which underlies the legislation and endeavoring to ascertain what was the legislative intent. If the language of the law were entirely free from doubt, we would have no right to resort to construction. *Slingluff v. Weaver*, 66 O. S., 621. But the court in that case laid down this rule in cases where the meaning is doubtful:

“The object of judicial investigation in the construction of a statute is to ascertain and give effect to the intent of the law-making body which enacted it. And where its provisions are ambiguous, and its meaning doubtful, the history of legislation on the subject, and the consequences of a literal interpretation of the language may be considered; punctuation may be changed or disregarded; words transposed, or those necessary to a clear understanding and, as shown by the context manifestly intended, inserted.”

Applying these principles I must conclude that the words “by a municipal corporation” ought not to be given a too literal or harsh interpretation, or one that would lead to a highly unfair result. As a matter of fact no money is ever collected *by a municipality* in state cases. Plainly the legislature had in mind moneys belonging to the state or a county, collected by certain *municipal officers* while engaged in the performance of duties imposed on them by the state, relating to functions in which the state has an exclusive interest. It appears to me that by this legislation the officers in question are in effect constituted the agents of the county for the collection and disposition of the moneys under consideration, and that their act in paying the required amounts to the law library association is the act of the county. It follows that to carry out the manifest intent of the law, the refund, so far as those moneys are concerned, must be to the treasurer of the county.

You have submitted figures showing actual examples of the absurd and unfair result of applying the opposite theory to these refunds. In one case more than 98 per cent of the total sum paid over by the clerk of municipal courts to the law library came from fines, etc., in state cases, and the amount of the refund if all went to the municipality would have been more than twenty times the total amount which it had paid in from ordinance cases. This manifestly harsh and unfair result would not of course change the law if its meaning was quite clear, but it serves, I submit, to strengthen the conclusion that the legislature never intended to perpetrate such an injustice.

Your letter appears to raise the specific question as to the obligation of a municipal corporation which has received a refund that should have been paid to the county, to pay the same over to the county. The conclusion which I have reached as to the right of the county to this refund leads clearly to the further conclusion that under the circumstances mentioned, the municipality is liable to the county for moneys so received.

The obligation to make restitution rests on the principle of quasi contract. The principle is thus stated by 12 Am. Jur., page 503 :

“In quasi contracts the obligation arises, not from consent of the parties, as in the case of contracts, express or implied in fact, but from the law of natural immutable justice and equity. * * * Where a case shows that it is the duty of the defendant to pay, the law imputes to him a promise to fulfill that obligation. The duty, which thus forms the foundation of a quasi-contractual obligation, is frequently based on the doctrine of unjust enrichment. The right of recovery for money paid under mistake, where it exists, is based upon the promise to return the money which the law implies, irrespective of any actual promise, and even against the refusal to make it, whenever the circumstances are such that *ex aequo et bono* the money should be paid back, but in such case only.”

This principle was applied in an opinion by my immediate predecessor, found in 1942 Opinions of the Attorney General, page 423, where it was held :

“When, on an appeal from the action of a county budget commission allocating the undivided local government fund of a county to and among the several subdivisions of the county, it is determined that one subdivision, at the expense of another, erroneously received more than its proper share, such former subdivision should pay over to the latter the amount erroneously allocated and distributed to it.”

Accordingly, it is my opinion :

1. Moneys resulting from fines, penalties and forfeited recognizances in state cases prosecuted in a mayor's court or in a police or municipal court, when collected by the mayor or by the clerk of such court and paid pursuant to the provisions of Section 3056, General Code, to the law library association are not moneys collected by the municipality, but such officers in making such collection and disposition of such moneys are performing duties imposed upon them by the law in a matter in which the state has an exclusive interest.

2. In so far as such moneys are by the general law, except for the provisions of Section 3056, General Code, to be paid into the treasury of the county, the mayor and clerk of a police or municipal court in collecting and so disposing of said moneys are acting as the agents of the county, and the refunds provided by Section 3058, General Code, should as to such funds be paid by the treasurer of the law library association to the treasurer of the county.

3. Where a refund is made by the treasurer of a law library association as provided by Section 3058, General Code, and moneys which should have been paid to the treasurer of the county have been allocated and paid to the treasurer of a municipality, such municipality is under legal obligation to pay to the county the amount so erroneously allocated and distributed to it.

Respectfully,

HUGH S. JENKINS,
Attorney General.