

2429.

TRANSPORTATION EXPENSES OF PRISONERS CONVICTED UNDER STATE LAWS AND COMMITTED TO JAIL FROM MAYOR'S COURT ARE EXPENSES INCURRED IN STATE CASES—PAID FROM COUNTY TREASURY.

*Transportation expenses of prisoners convicted under state laws and committed to jail from a mayor's court are expenses incurred in state cases, as provided by section 3017 G. C., amended 109 O. L. 173, requiring that such expenses shall be paid from the county treasury.*

COLUMBUS, OHIO, September 20, 1921.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your letter in which you request the opinion of this department upon the following question:

“Is the transportation of prisoners convicted under state laws in the mayor's court to the county jail situated in another city an expense to be borne by the county or city?”

As pertinent to the submitted question, it is believed that section 3017 G. C., as amended by S. B. No. 57 (109 O. L. 173), would indicate the proper treasury to be charged with the payment of such an expense as is contemplated by your inquiry. Said section is as follows:

“Sec. 3017. In all state cases any wholly salaried minor court officer charged with the execution of a warrant to arrest or order of commitment shall receive from the county treasury the actual necessary expense of executing such writs upon specifically itemized bills, verified by his oath, and certified to by the proper magistrate, court or clerk thereof, and in like manner such expense shall be paid from the municipal treasury when incurred in ordinance cases.”

Construing this section, it would seem that it was the legislative intent to definitely distinguish between the “expense” incurred in the execution of the writs for warrants to arrest and orders of commitment in ordinance cases, and the similar expense incident to the execution of the same in state cases, as well as to limit the payment of such expenses to such minor court officers, as those whose compensation was wholly that of a salary. It may also be observed in similar connection that the words “actual necessary expense” as used in this section apparently are intended to mean only that bare and necessary expense as was actually required for the proper execution of the writ, and are not intended to include any other additional fee or cost which in similar cases might be taxed or collected by the officer executing the writ.

It is thought that the section cited clearly provides for the payment of the expenses under consideration by expressly providing that in ordinance cases such expenses are to be paid from the municipal treasury, while in all state cases payment of the same shall be made from the county treasury.

Since the expense of transportation of prisoners convicted under the provisions of state laws would be such as would be attendant to the expense incurred in the execution of an order of commitment to jail in a state case, it

obviously would follow that such an expense as is contemplated by your inquiry should be paid from the county treasury, provided, of course, that the same is legal and properly certified as required by law.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

2430.

DISAPPROVAL, DEFICIENCY BONDS OF CLEARCREEK TOWNSHIP  
RURAL SCHOOL DISTRICT IN AMOUNT OF \$17,000.

COLUMBUS, OHIO, September 21, 1921.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

Re: Deficiency bonds of Clearcreek township rural school district  
in the amount of \$17,000.

GENTLEMEN:—The transcript for the above bond issue discloses that the board of education of Clearcreek township rural school district in authorizing the issuance of said bonds was acting under authority of House Bill 254, which provides for the issuance of deficiency bonds by a school district.

Upon examination of the transcript I find that the financial statement of the accounting officer, which was prepared as of March 1, 1921, is defective in the following particulars:

(1) The debit item in the tuition fund of \$17,000, made up of two obligations secured by notes, one for \$13,000 and the other for \$4,000, should have been listed as unfunded indebtedness under paragraph 2 of section 2 of House Bill 254.

(2) The financial statement fails to contain "an estimate of the amount necessary to provide for the fixed charges and current expenses of the subdivision for the year ending July 1, 1921, including obligations for such 'fixed charges' and 'current expenses' incurred prior to March 1, 1921, and payable within the then current fiscal year" as required by paragraph 3 of section 2 of said house bill.

(3) The financial statement fails to show "the amount of taxes estimated to come into the treasury of such subdivision during the remainder of the year ending July 1, 1921, and applicable to the purposes of such year" as is required by paragraph 4 of section 2 of said house bill.

(4) The financial statement fails to show that the clerk has certified under oath that a deficit exists and the amount thereof as required in paragraph 4, section 2, of said house bill.

(5) It appears also from the transcript that the financial statement prepared by the clerk pursuant to the resolution of the board of education was not sworn to by him until the 16th day of September, 1921, which was subsequent to the date of the passage of the bond resolution.

Paragraph 4, section 2, of said house bill makes it mandatory that the financial statement should be sworn to by the clerk and as the supplying of a financial statement in compliance with the law is a jurisdictional step in the proceedings, the board of education was without authority to pass a bond