noted that the taxation of costs would depend in such a case upon the terms of the ordinance or statute.

Section 12375 provides in part that:

> "In all sentences in criminal cases, the court shall include therein and render a judgment against the defendant for the costs of prosecution;"

but if this section could be held to apply to and include the Lima criminal court, it would not materially assist in the solution of the question, because while this section provides that the sentence shall include "the costs of prosecution," the question still remains to be determined, what is to be included in those "costs." So that, except as above noted, your question can only be generally answered in this way and to this extent: that the taxation and inclusion of fees as costs in the sentence in the criminal court at Lima is not provided for in the act creating such court and may not be so taxed and included unless provision therefor is made in the particular ordinance or statute upon which the prosecution is based.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1481.

BANKS AND BANKING—COMPUTATION OF INTEREST—WHEN THREE HUNDRED AND SIXTY DAYS IS NOT AN ILLEGAL METHOD OF COMPUTING INTEREST UPON LOANS TO MUNICIPALITIES UNDER SECTION 3913 G. C.

1. *In the computation of interest for a portion of a year expressed in "days," where exactness is desired, three hundred and sixty-five days should be used as the basis.*

2. *The method of computing interest for the fractional part of a year expressed in "days," using three hundred and sixty days as a basis, being a usage and custom in universal operation, can not be said to be illegal if employed to determine the interest due upon loans made to municipalities under section* 3913 *G. C.*

COLUMBUS, OHIO, August 5, 1920.

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

GENTLEMEN:—In your communication of recent date you request a written opinion on the following statement of facts:

> "It is a largely prevalent custom of the banks of this state in computing interest on loans made to the various municipalities under authority of sections 3913 and 3915 G. C. to use interest tables based upon a year of 360 days. Thus if such a loan runs 60 days, sixty-three-hundred sixtieths (60-360) of a year's interest is charged. Based upon this method the municipalities pay thousands of dollars more interest upon such loans than they would pay if the basis of computation were taken on a year of 365 days or 366 days.
> Question: Is this legal? '

Section 3913 to which you refer, is as follows:

> "In anticipation of the general revenue fund in any fiscal year, such cor-

porations may borrow money and issue certificates of indebtedness therefor, signed as municipal bonds are signed, but no loans shall be made to exceed the amount estimated to be received from taxes and revenues at the next semi-annual settlement of tax collections for such fund, after deducting all advances. The sums so anticipated shall be deemed appropriated for the payment of such certificates at maturity. The certificates shall not run for a longer period than six months, nor bear a greater rate of interest than six per cent, and shall not be sold for less than par with accrued interest."

The provisions of this statute relative to the maximum rate of interest that may be charged must be construed to mean that not more than six per cent "annually" may be charged; otherwise six per cent could be charged for six months, which would be the equivalent of twelve per cent per annum, which result, of course, was not intended. "Annually" refers to a "year," which has been properly defined as follows:

"A year is a determinate and well known period consisting commonly of three hundred and sixty-five days, and in leap years of three hundred and sixty-six."

It therefore will be seen that in computing interest on a sum of money for a number of days constituting a fractional part of a year, in order to be exact it necessarily must be computed upon the basis of three hundred and sixty-five days in the year or for leap years, three hundred and sixty-six days. In other words, the number of days for which interest is due taken for a numerator, and three hundred and sixty five or three hundred and sixty-six as the case may be, used as a denominator, will indicate the fractional part of the total year's interest to be charged. There can be no doubt from a technical standpoint that this is the correct rule where exactness is desired. However, your statement of facts recites that it is a largely prevalent custom of banks of Ohio to use three hundred and sixty days as the basis of computation rather than the actual number of days which constitutes a given year. In arriving at the proper conclusion, it necessarily requires a consideration of this phase of the situation. It will not be disputed that it is a universal custom of long standing in the commercial world to use three hundred and sixty days as the basis of computing interest on short time loans where the instruments of indebtedness express the period for which it is to run in "days."

It will be conceded that for generations the rule almost universally taught in the public schools, gave three hundred and sixty days as the basis. The statute being silent on the method of computing, careful consideration must be given in reference to the effect of a recognized custom which your statement of facts concedes to exist. It has been held that:

"A custom in order to be engrafted upon a written contract, must be shown to be certain uniform reasonable, and so generally known and publicly acquiesced in that the parties to the contract should have known of it."

Wald vs. Bien, 14 O. N. P. (N. S.) 145.

"To be good, a custom or usage must be in all respects a reasonable one."

Page's Ohio Digest: Vol. II, p. 4811.

"Usages of banks prevalent in the vicinity and generally followed, are

presumed to be reasonable, and the burden of showing them unreasonable is upon the one who assails them, the question being not if the custom is reasonable, but has it been shown to be unreasonable."

Hilsinger vs. Trickett, 86 O. S. 286.

In view of the long standing of the custom under consideration, it is believed that it can fairly be assumed that the legislature had knowledge at the time this legislation was enacted that the method of computation generally in use was based upon three hundred and sixty days.

The legislature in an act found in 102 O. L. 35, amending section 330-3 of the General Code obligated state depositories to pay to the treasurer of state for the use of the state interest upon daily balances certain interests therein stipulated "on a three hundred and sixty-five day basis." It is believed that this fact strongly indicates that the legislature recognized the general custom of figuring interest upon a three hundred and sixty day basis and sought by the enactment referred to to make the bank depository an exception. The question of whether or not the custom is reasonable should be considered. It will be observed that the interest on a thousand dollars for sixty days at six per cent computed on the three hundred and sixty day basis amounts to $10.00. The interest on the same sum for the same period figured upon the three hundred and sixty-five day basis amounts to $9.863 plus. In other words, the state loses $0.137 minus on a thousand dollars loaned for a period of sixty days by using the former method. Undoubtedly, municipalities contract with reference to the rules of the bank, and it is believed your question could not arise if it were not for the fact that the maximum rate is charged. In other words, the question is, can the technical advantage the bank receives by using the three hundred and sixty day basis of computation constitute the payment of more than six per cent interest in contravention of the statute. In view of this situation, it is believed that the reasoning in the decisions involving the question of usury is applicable to the question under consideration.

The following is quoted from the syllabus in the case of Lafayette vs. Findlay, 1 Ohio, Dec. 49:

"Taking interest for a portion of the year, computed upon the principle that a year consists of three hundred and sixty days, is not usurious, provided this rule was adopted for convenience, and there was no intent to violate the charter in taking more than six per cent per annum."

Also it has been held:

"The rules of the bank, whereby interest is taken in advance and taking interest on renewals on the old and new note both, for the day of renewal and also calculating interest for a day as one three hundred and sixtieth part of a year, etc., are legal, being sanctioned by universal banking usage."

See 29 L. R. A., p. 762.

It has been noted that the courts of Ohio have recognized the rule relative to the computing of time expressed in months. In the case of McMurchey vs. Robinson, 10 Ohio, 496, it was held:

"If a negotiable instrument is payable a certain number of months after date, its maturity is to be reckoned by calendar months. If a note is given on March 20th and due four months after date, it is due on July 20th."

Applying the above rule, it will be observed that if a note is dated February 1st, and bearing interest from date, and payable one month after date, it would be payable on March 1st. Under these circumstances, by using the month rule it is evident that the borrower would owe the bank one month's interest, o one twelfth of the yearly interest, yet the borrower would have only had the use of the money for twenty eight days.

It has been held that calling thirty days a month is not usurious, and where the excess amount of interest received is insignificant it does not constitute usury; and it has been held that long continued practice of banks taking interest according to printed tables not exactly correct may be conclusive of good faith. See Perley's Law of Interest, page 224.

In view of the foregoing, and especially in view of the decision of the supreme court of Ohio heretofore referred to, holding that a rule of a bank will be presumed to be reasonable and the burden is upon those attacking the rule to show that it is unreasonable it is believed that in the absence of judicial decisions holding the three hundred and sixty day rule to be unreasonable, this department is not justified in saying that it is unlawful to calculate interest in accordance with said rule. However, as heretofore stated, it is undoubtedly the proper method where exactness is required to use the three hundred and sixty five day method when the time is expressed in days. In this respect municipalities in the interest of efficiency should use the three hundred and sixty-five day method in those cases in which it works to its advantage.

However, it may be observed that there are cases in which the municipality must comply with the rules of the bank before they may secure a loan. In such cases, of course, they would be justified in using the method to which you have referred. Perhaps the time may arrive when the three hundred and sixty day method may, in the interest of exactness and efficiency, be supplanted by the three hundred and sixty-five day rule, or legislation may provide for such a rule in all cases; but until such a rule is established by the legislature or by custom or usage, I am constrained to hold that the method in general use cannot be said to be illegal.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1482.

APPROVAL, BONDS OF UPPER SANDUSKY, OHIO, IN AMOUNT OF $12,500 FOR FIRE ENGINE.

COLUMBUS, OHIO, August 6, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

1483.

APPROVAL, BONDS OF ASHLAND COUNTY, OHIO, IN AMOUNT OF $83,000 FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, August 6, 1920

Industrial Commission of Ohio, Columbus, Ohio.