

Section 9887, General Code, the county commissioners may purchase land from an agricultural society and lease the same to the agricultural society and such conditions may be taken into consideration as a part of the purchase price. However, when such a purchase involves an expenditure of more than ten thousand dollars, it is necessary to submit the question to a vote of the people in the manner provided in said section.

For your information, I am enclosing herewith a copy of my opinion No. 1361, issued under date of January 3, 1930, which discusses the power of the county commissioners with reference to aiding agricultural societies.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1407.

CRIMINAL LAW—WHEN VILLAGE MAYOR MAY ISSUE WARRANT TO ARREST TO A SHERIFF, DEPUTY SHERIFF OR CONSTABLE—DISPOSITION OF FEES.

SYLLABUS:

1. *By virtue of the provisions of Section 13432-9 of the General Code, the mayor of a village may legally issue a warrant of arrest directed to a sheriff, deputy sheriff or constable if the offense is a violation of the state laws.*

2. *The fees provided by Section 2845 of the General Code for the services of a sheriff and deputy sheriff, and the fees provided in Section 3347 for a constable in serving warrants directed to them by a mayor of a village, in state cases, may be legally taxed and collected from defendants, and such fees may be paid to these officers. However, the fees so collected by a sheriff or deputy sheriff must be paid into the general fund of the county.*

COLUMBUS, OHIO, January 14, 1930.

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

GENTLEMEN:—I am in receipt of your letter of recent date, which is as follows:

“Section 13432-9, 113 O. L., page 141, reads:

‘When an affidavit charging a person with the commission of an offense is filed with a judge, clerk or magistrate, if he has reasonable ground to believe that the offense charged has been committed, he shall issue a warrant for the arrest of the accused; if the offense charged is a violation of the laws of the state, such warrant may be directed to and executed by any officer named in Section 1 of this chapter, but if the offense charged is a violation of the ordinance or regulation of a municipal corporation, such process shall be directed to and executed by the officers of such corporation.’

Question 1. May the mayor of a village legally issue a warrant to arrest to a sheriff, deputy sheriff or constable, in state cases?

Question 2. May the fees provided by statute for the services of such officer, be legally taxed against, and collected from, defendants in state cases, and be legally paid to such peace officer?”

Section 13432-9 of the General Code, quoted by you in your letter, clearly authorizes a magistrate to issue a warrant, if the offense is a violation of the state laws, directed to the officers mentioned in Section 1 of Chapter 11 of the new Code of

Criminal Procedure. The officers mentioned in Section 1, Chapter 2, include, among others, a sheriff, deputy sheriff and constable.

Section 13422-1 of the General Code, which is a part of the new Code of Criminal Procedure, defines a magistrate so as to include mayors of municipal corporations, and, therefore, a mayor of a village is a magistrate within the meaning of Section 13432-9 of the General Code. It is therefore apparent that, by virtue of the provisions of the sections above referred to, a mayor of a village may legally issue a warrant directed to a sheriff, deputy sheriff or constable, if the offense is a violation of the state laws.

While Section 13432-9 of the General Code authorizes a mayor of a village to direct a warrant to a sheriff, deputy sheriff or constable, and such officers must perform this duty, this in itself does not give rise to the implication that they should receive compensation therefor, for it has been repeatedly held that where services for the benefit of the public are required by law and no provision for the payment of such services is made, it must be regarded as gratuitous and no claim for compensation can be enforced. Therefore it is necessary to examine other statutes in order to determine whether or not provision is made for the payment of compensation of such services.

Sections 2845 and 3347 of the General Code, relating to fees of constables, sheriffs and deputy sheriffs, are pertinent here. Section 2845 of the General Code provides in part as follows:

“For the services hereinafter specified when rendered, the sheriff shall charge the following fees, and no more, which the court or clerk thereof shall tax in the bill of costs against the judgment debtor or those legally liable therefor: For the service and return of the following writs and orders, namely, * * * warrant to arrest each person named in the writ, one dollar; * * * When any of the foregoing services are rendered by an officer or employe, whose salary or per diem compensation is paid by the county, the legal fees provided for such service in this section shall be taxed in the costs in the case and when collected shall be paid into the general fund of the county.”

Section 3347 of the General Code provides in part as follows:

“For services actually rendered and expenses incurred, regularly elected and qualified constables shall be entitled to receive the following fees and expenses, to be taxed as costs and collected from the judgment debtor, except as otherwise provided by law: Serving and making return of each of the following orders or writs, for each defendant named therein, including copies to complete service, if required by law, one dollar, viz., search warrant, warrant to arrest, * * * .”

These statutes authorize the officers mentioned therein to receive fees for services which they are authorized under the statutes to perform, and such fees may be taxed as costs against a judgment debtor. Section 13451-18 of the General Code provides in part as follows:

“In all sentences in criminal cases, including violations of ordinances, the judge or magistrate shall include therein, and render a judgment against the defendant for the costs of prosecution * * * .”

Since Section 13432-19 of the General Code authorizes a mayor of a village to issue a warrant directed to the sheriff, deputy sheriff or constable, they are authorized,

therefore, to receive the fees set forth in Sections 2845 and 3347 of the General Code, and the mayor is authorized to tax these fees as costs against the defendant. It must be kept in mind, however, that under the provisions of Section 2845 of the General Code a sheriff or deputy sheriff must pay the fees collected for serving a warrant into the general fund of the county.

In specific answer to your inquiry, I am of the opinion:

1. The mayor of a village may legally issue a warrant of arrest directed to a sheriff, deputy sheriff or constable if the offense is a violation of the state laws.

2. The fees provided by Section 2845 of the General Code for the services of a sheriff and deputy sheriff, and the fees provided in Section 3347 for a constable in serving warrants directed to them by a mayor of a village in state cases, may be legally taxed and collected from defendants, and such fees may be paid to these officers. However, the fees so collected by a sheriff or deputy sheriff must be paid into the general fund of the county.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1408.

SHERIFF—RIGHT TO COLLECT FIRST MORTGAGE HOLDER'S CLAIM
AND CHARGE POUNDAGE WHERE SECOND MORTGAGE HOLDER
BUYS PROPERTY—WHEN POUNDAGE NOT CHARGEABLE.

SYLLABUS:

1. *Where a second mortgage holder purchases the property in a foreclosure proceeding, the sheriff may collect the amount of the first mortgage holder's claim and charge poundage thereon. He may also refuse to permit the said first mortgage holder to receipt the sheriff's docket until the money has passed through his hands.*

2. *In the event the sheriff does not require the money to be paid to him, but on the other hand agrees that the purchaser shall pay the first mortgage holder direct, under such circumstances poundage could not be charged.*

COLUMBUS, OHIO, January 14, 1930.

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

GENTLEMEN:—Acknowledgment is made of your communication requesting my opinion upon the following:

“Under the law relating to poundage which a sheriff may charge in the foreclosure of a mortgage, you hold in an opinion rendered to this department under date of July 22, 1929, that in case the holder of the second mortgage purchases the property at sheriff's sale that the sheriff under the provisions of Section 2845, G. C., is entitled to poundage at the rate prescribed therein on the full amount of the proceeds of such sale over and above the distributive share of such proceeds payable to the second mortgage holder. A request has been made to this department for your opinion upon two additional questions:

First, is a sheriff entitled to poundage in this case if he does not receive and disburse the money due to the first mortgage holder? See Opinion at page 1098 of your 1928 Opinions.