111.

APPROVAL, NOTES OF POWHATAN POINT VILLAGE SCHOOL DISTRICT, BELMONT COUNTY, OHIO—$3,500.00.

COLUMBUS, OHIO, February 7, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

112.

APPROVAL, BONDS OF WASHINGTON TOWNSHIP RURAL SCHOOL DISTRICT, MORROW COUNTY, OHIO—$60,000.00.

COLUMBUS, OHIO, February 7, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

113.

APPROVAL, NOTES OF NELSONVILLE CITY SCHOOL DISTRICT, ATHENS COUNTY, OHIO—$8,500.00.

COLUMBUS, OHIO, February 8, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

114.

SALARY REDUCTION ACTS—JUDGES' SALARIES REDUCED IN PROPORTION TO PART PAID BY STATE AND COUNTY—VOLUNTARY REDUCTION MAY BE GIVEN COUNTY RATHER THAN STATE.

SYLLABUS:

1. *Under the plain provisions of section 2 of Amended Substitute House Bill No. 1, of the third special session of the 89th General Assembly, the schedule of reduction of salary set forth in section 3 of said act is to be applied to the total compensation of each common pleas and appellate judge to which said act applies, and the amount paid toward such judge's total salary by the state, county or counties, shall be reduced in the proportion that each political division contributes to said total compensation.*

2. *Common pleas and appellate judges, to whom the salary reduction law (Amended Substitute House Bill No. 1) does not apply, may refuse to take the*

reduction as regards the state's contribution and donate the same, or such part thereof as they may elect, to their county or counties, as the case may be.

COLUMBUS, OHIO, February 8, 1933.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Your recent inquiry reads as follows:

> "We are requested by some of the judges of Cuyahoga County to submit the following questions:
>
> Q. 1. Shall the reduction of salary under the Bill (Amended Substitute House Bill No. 1, third special session, 89th General Assembly) be determined by starting with 5% reduction on the State salary of $3,000 until exhausted, and then start over again as to the County salary of $9,000, with the starting point at 5% on the first thousand, and so on, following the Act, thus treating the State and County as separate units upon which to calculate the reduction?
>
> Q. 2. May a judge, to whom the amended law does not apply, refuse to take the reduction as regards the State's contribution of $3,000 and donate the same or such part thereof as he may elect, to his county, thus favoring his county treasury with the entire reduction?"

Sections 2 and 3 of Amended Substitute House Bill No. 1 of the third special session of the 89th General Assembly read as follows:

> "Section 2. During the period beginning January 1, 1933, and ending December 31, 1934, the compensation of all judges which is fixed, limited or determined, in whole or in part, by sections 2251, 2251-1, 2252, 2252-1, 2253, 2253-2, 2253-3 of the General Code shall be reduced according to the schedule set forth in section 3 of this act, the provisions of such sections of the General Code to the contrary notwithstanding. *Said schedule shall be applied to the total compensation of each such judge and the amount paid toward his total salary by the state, county or counties shall be reduced in the ratio that each such political unit contributes to such total salary.*" (Italics the writer's.)
>
> "Section 3. Such reduction shall be made in the following manner: there shall be a reduction of 5% of each annual salary of $1,000 or less, and on the first $1,000 of each annual salary of an amount greater than $1,000; there shall be a reduction of 10% of that portion of each annual salary in excess of $1,000 up to and including $2,000; there shall be a reduction of 12½ per cent of that portion of each annual salary in excess of $2,000 up to and including $3,000; there shall be a reduction of 15 per cent of that portion of each annual salary in excess of $3,000 up to and including $4,000; there shall be a reduction of 17½ per cent of that portion of each annual salary in excess of $4,000 up to and including $5,000; there shall be a reduction of 20 per cent of that portion of each annual salary in excess of $5,000."

Under the italicized portion of section 2, supra, it is clear that the legislature has, in clear and unambiguous language, provided that the scale of reduction set forth in section 3 shall be applied to the "total" compensation of each

judge, and after this is accomplished, the amount paid toward the judges' total compensation by the state, county or counties, as the case may be, is to be reduced in the proportion that each political division contributes to said total compensation.

It is a general principle of statutory construction that if the terms of a statute are clear and unmistakable there is no authority for the courts to construe such statute. See *Mansfield* vs. *Brooks,* 110 O. S. 566; *State ex rel.* vs. *Brown,* 121 O. S. 329; *Swetland* vs. *Miles,* 101 O. S. 501, and *Ohio S. & T. Co.* vs. *Schneider,* 25 App., 259. I feel that this principle is applicable here. It is true that this procedure will cause a great deal of inconvenience, in that the compensation which the judges receive from the county or counties varies greatly and much figuring will be required of your office and county auditors in checking the amount of salary to be paid by the state and counties toward the judges' compensation. However, it has been held that inconvenience in carrying out the terms of a statute does not justify a court in ignoring its plain provisions. In the fourth paragraph of the syllabus of the case of *The State ex rel.* vs. *Bushnell,* 95 O. S. 203, it is stated:

> "When the meaning of the language employed in a statute is clear, the fact that its application works an inconvenience or accomplishes a result not anticipated or desired should be taken congnizance of by the legislative body, for such consequence can be avoided only by a change of the law itself, which must be made by legislative enactment and not by judicial construction."

In view of the above discussion, I am of the opinion that your first question must be answered in the negative.

Coming now to your second question, I may call attention to the first paragraph of the syllabus of Opinion No. 3962, rendered by this office under date of January 18, 1932. Said syllabus reads as follows:

> 1. A public officer may, lawfully, if he sees fit, draw his salary or compensation and donate a portion or all of it to the political subdivision from which it is drawn. A previous agreement to do so, however, is not enforcible, as it is contrary to public policy and therefore void."

The above opinion dealt with county officers drawing compensation from the county treasury alone, and in this opinion the common pleas and appellate judges, who are partly state and partly county officers (see *State* vs. *Rafferty,* 5 App. 463; 26 C. C. (N. S.) 408; 27 O. C. D. 569), receive their compensation partly from the state and partly from the county treasuries. However, the same principle is applicable here. There is no doubt but that the salary of a judge belongs to him, regardless of the source from which it comes, and he can dispose of it in any manner he sees fit. If he desires to give to the county the amount which would be the state's proportion of the reduction of his salary had he not constitutional protection, I see nothing to prevent him from doing so.

In the opinion mentioned above, it was stated at page 2:

> "Counties are authorized by statute to accept gifts. Section 18, General Code. There is no limitation on the source of the subject of a gift to a county, or the person of the donor."

Thus, in specific answer to your second question, I am of the opinion that a judge, to whom the salary reduction law (Amended Substitute House Bill No. 1) does not apply, may refuse to take the reduction as regards the state's contribution and donate the same, or such part thereof as he may elect, to his county.

Respectfully,
JOHN W. BRICKER,
Attorney General.

115.

CITY POLICEMEN—ENTITLED TO WITNESS FEES IN CRIMINAL CASES BEFORE COMMON PLEAS COURT—SECTION 3024 G. C. CONSTRUED.

SYLLABUS:

City police officers are entitled to the regular witness fees in criminal cases prosecuted in the Common Pleas Court, the effect of Section 3024 of the General Code being to prohibit such fees only in cases before municipal courts, mayors, justices of the peace and similar courts.

COLUMBUS, OHIO, February 8, 1933.

HON. FRAZIER REAMS, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR:—I have your letter of recent date, which reads as follows:

> "We are requested by the new Clerk of Courts of Lucas County to construe Section 3024 of the General Code regarding payment of witness fees to policemen.
>
> It has been the practice here for many years to allow city police officers the regular witness fee in criminal cases prosecuted in our Common Pleas Court. These fees, however, have been donated to the Police Pension Fund in all cases.
>
> We have conferred with the Trustees of the Police Pension Fund who state that, according to the opinion of the City Law Department, handed down a few years ago, they are entitled to claim fees in all state cases tried in Common Pleas Court, under Section 3024, on the ground that said section only prohibits them from collecting fees in Justice of the Peace or similar courts."

Section 3024 of the General Code provides:

> "No watchman or other police officer is entitled to witness fees in a cause prosecuted under a criminal law of the state, or an ordinance of a city before a police judge or mayor of such city, justice of the peace, or other officer having jurisdiction in such causes."

This section, as it now stands, was construed by one of my predecessors in an opinion reported in the Report of the Attorney General, 1913, Volume 2, page 1417, the syllabus of which reads: