

In specific answer to your questions, I am of the opinion that when a board of education determines to furnish a schoolhouse, the aggregate cost of which furnishings will in a city district exceed \$3,000 and any other district \$1,000, the purchase must be made upon competitive bidding after due advertisement, as provided by Section 7623, General Code, even though such furnishings consist of several types or classes of furnishings each of which costs less than \$3,000 or \$1,000, as the case may be. This must be done whether all the different types or classes of furnishings may be purchased from one dealer or manufacturer or whether they must necessarily be purchased from different dealers or manufacturers and whether or not the board desires to provide the furnishings all at one time or at different times.

In securing bids for furnishings for a school building, boards of education are not required to submit to bidders specifications in minute detail, but may receive bids on specifications general in their nature, setting forth the purpose which the furnishings are intended to serve; and thereafter contracts may be let to the lowest responsible bidder by comparison of the amount of the bids in the light of the quality and utility of the articles upon which the bids are based.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2049.

FEES—IN STATE CASES—MAYOR ENTITLED TO HOLD SAME IN HIS FAVOR.

*SYLLABUS:*

*In all state cases, by the terms of Section 4270, General Code, the mayor of a city or village is entitled to hold the legal fees taxed in his favor.*

COLUMBUS, OHIO, May 2, 1928.

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

GENTLEMEN:—This will acknowledge your letter which reads:

“May the mayor of a village legally retain fees taxed and collected in state cases including prohibition cases?”

On April 5, 1927 (112 v. 141), the Legislature amended Section 4270, General Code, to read as follows:

“All fines and forfeitures in ordinance cases and all fees collected by the mayor, or which in any manner come into his hands, due such mayor or to a marshal, chief of police or other officer of the municipality and any other fees and expenses which have been advanced out of the municipal treasury, and all moneys received by such mayor for the use of the municipality, shall be by him paid into the treasury of the municipality on the first Monday of each month. At the first regular meeting of council in each and every month, he shall submit a full statement of all money received, from whom and for what purposes received and when paid into the treasury. 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."

Prior to its amendment this section provided:

"All fines and forfeitures in ordinance cases and all fees collected by the mayor, or which in any manner comes into his hands, due such mayor or to a marshal, chief of police or other officer of the municipality and any other fees and expenses which have been advanced out of the municipal treasury, and all moneys received by such mayor for the use of the municipality, shall be by him paid into the treasury of the municipality on the first Monday of each month, provided that the council of a village may, by ordinance, authorize the mayor and marshal to retain their legal fees in addition to their salaries, but in such event a marshal shall not be entitled to his expenses. At the first regular meeting of council in each and every month, he shall submit a full statement of all moneys received, from whom and for what purposes received and when paid into the treasury. 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."

Your attention is directed to the case of *State ex rel. Nead vs. Nolte*, 111 O. S. 486. This action originated in the Court of Common Pleas of Hamilton County, as a taxpayer's suit, to require the defendant, the mayor of Norwood, to pay into the city treasury certain fees theretofore collected by him in the trial of criminal cases before him for violation of the laws of the state. The third paragraph of the syllabus reads:

"3. Section 4270, General Code, as amended (108 O. L. Pt. 2, p. 1208), imposes no duty upon the mayor of a municipality to pay into the city treasury the fees taxed in favor of such mayor in the hearing of state cases."

In the course of the opinion, after quoting Section 4270, General Code, as it read prior to its recent amendment in 112 v. 141 (quoted *supra*) Chief Justice Marshall, who wrote the opinion of the Court, said:

"Prior to the last amendment, that section (P. & A. Code, Section 4270), read as follows:

'All fines and forfeitures collected by the mayor, or which in any manner comes into his hands, and all moneys received by him in his official capacity, other than his fees of office, shall be by him paid into the treasury of the corporation weekly. At the first regular meeting of the council in each and every month, he shall submit a full statement of all such moneys received, from whom and for what purpose received, and when paid over. All fines, penalties, and forfeitures collected by him in state cases shall be by him paid over to the county treasurer monthly.'

It will be observed that several changes were made by the amendment, and it will be presumed that the Legislature intended that certain rights and privileges which existed before, should no longer exist after, the amendment. The case is full of difficulty, and has commanded the earnest consideration of the court.

The conclusion which has been reached by the majority is that the section as amended leaves the fees taxed in favor of the mayor in two general classes,

to-wit, ordinance cases and state cases. The earlier provisions of the section apply only to ordinance cases, and the latter provision only to state cases. Taking up the latter provision first, it will be observed that in state cases it is the duty of the mayor to pay into the county treasury 'all fines and forfeitures collected by him \* \* \* together with all fees and expenses collected, which have been advanced out of the county treasury.' It requires no elaboration of argument to show that the fees taxed by the mayor are not included within the language quoted. Construing the earlier parts of the section, it is plain that whatever moneys are described therein must be paid into the municipal treasury. But, if those portions of the section apply only to ordinance cases, then the relator is clearly not entitled to the relief prayed for. The amendment has left out the phrase 'other than his fees of office,' but this omission has no controlling significance in the determination of this suit involving fees in state cases, since the earlier portion of the statute applied, prior to the amendment, only to ordinance cases. This amendment has, however, made a change in that respect, and this omission from the statute as formerly existing seems quite harmonious with another clause which was added in the amendment, to-wit, 'provided that the council of a village may, by ordinance, authorize the mayor and marshal to retain their legal fees in addition to their salaries.'

It is, of course, a well settled rule of interpretation, well expressed by this court in *Board of Education of Hancock County vs. Boehm*, 102 Ohio St., 292, 131 N. E., 812, that:

'When an existing statute is repealed, and a new and different statute upon the same subject is enacted, it is presumed that the Legislature intended to change the effect and operation of the law to the extent of the change in the language thereof.'

Very important changes were therefore made by the amendment, but they apply only to ordinance cases, and whereas formerly the mayor was entitled to hold fees in ordinance cases, the matter is now placed as to villages under the entire control of the village council. It will be observed that the word 'village' appears in Section 4270, and that the word 'city' nowhere appears. It will be further observed that the word 'village' appears only in that paragraph giving power to the council to authorize the mayor and marshal to retain their legal fees. Section 4270, however, appears in a chapter relating to both cities and villages. The section which was repealed, and which formerly carried the same number, 4270, was not confined to villages, but apparently applied to all municipalities, and, if the general provisions of the section as amended, other than the proviso, should not be construed as applying to all municipalities, there would be no legislation whatever upon that subject pertaining to cities.

The conclusions we have reached are in harmony with the decision of *City of Portsmouth vs. Milstead*, 8 C. C. (N. S.) 114, affirmed by this court without report 76 Ohio St. 597, 81 N. E. 1182.

The true interpretation of Section 4270, General Code, is therefore, that in all state cases the mayor of a city or village is entitled to hold the legal fees taxed in his favor; the same not having been included within the language of the latter part of the section, which makes provision for payment of certain moneys into the county treasury. As to all ordinance cases, the fees taxed in favor of a mayor or marshal must be paid into the village or city treasury.

By virtue of the proviso, a village council may by ordinance authorize the mayor or marshal to retain his legal fees."

You will note that by the act of April 5, 1927, supra, the Legislature amended Section 4270, supra, by deleting therefrom the clause "provided that the council of a village may, by ordinance, authorize the mayor and marshal to retain their legal fees in addition to their salaries, but in such event a marshal shall not be entitled to his expenses." As stated in the opinion in the Nolte Case, supra, the clause referred to relates to ordinance cases only and in no wise pertains to fees in state cases.

Your attention is directed to the fact that the Legislature, by its act of April 5, 1927 (112 v. 141), in no wise amended Section 4270, supra, so as to change the rule laid down in the Nolte Case, supra, viz.: "The true interpretation of Section 4270, General Code, is therefore, that in all state cases the mayor of a city or village is entitled to hold the legal fees taxed in his favor; the same not having been included within the language of the latter part of the section, which makes provision for payment of certain moneys into the county treasury."

Answering your question specifically, it is my opinion that in all state cases, by the terms of Section 4270, General Code, the mayor of a city or village is entitled to hold the legal fees taxed in his favor.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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2050.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN  
COLUMBIANA COUNTY.

COLUMBUS, OHIO, May 3, 1928.

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus, Ohio.*

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2051.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND PAUL L. GILMORE COMPANY, COLUMBUS, OHIO, FOR THE CONSTRUCTION OF ELECTRICAL WORK FOR ADDITIONS TO MUSEUM AND LIBRARY BUILDING AND EQUIPMENT, OHIO STATE UNIVERSITY, COLUMBUS, OHIO, AT AN EXPENDITURE OF \$1,933.00—SURETY BOND EXECUTED BY THE FIDELITY AND CASUALTY COMPANY OF NEW YORK.

COLUMBUS, OHIO, May 3, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Ohio State Archaeolog-