

4714.

APPROVAL, AGREEMENT FOR ELIMINATION OF GRADE CROSSING
IN VILLAGE OF BLAINE, BELMONT COUNTY, OHIO.

COLUMBUS, OHIO, October 28, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted a proposed agreement between your department and The Baltimore and Ohio Railroad Company covering the elimination of the grade crossing over the tracks of The Baltimore and Ohio Railroad Company on State Highway No. 1, in the Village of Blaine, Belmont County, Ohio.

After examination, it is my opinion that the proposed agreement is in proper legal form and when executed by you will constitute a binding contract. Said agreement is returned herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4715.

APPROVAL, BONDS OF MEDINA VILLAGE SCHOOL DISTRICT, ME-
DINA COUNTY, OHIO—\$11,166.66.

COLUMBUS, OHIO, October 31, 1932.

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

4716.

DEPUTY SHERIFF—SERVING WITHOUT COMPENSATION—NOT EN-
TITLED TO OFFICIAL FEES.

SYLLABUS:

A deputy sheriff appointed to serve without regular compensation is not entitled to any fees for the services rendered by him and such official fees accrue to the sheriff and must be by him turned into the county treasury in accordance with Section 2977, General Code.

COLUMBUS, OHIO, November 1, 1932.

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

GENTLEMEN:—Your letter of recent date requesting my opinion reads as follows:

“You are respectfully requested to furnish this Department your written opinion upon the following:

May a person appointed as deputy sheriff, and whose appointment has been approved by the Common Pleas Court, legally charge and receive fees for his own personal use in the event that he does not receive a salary from the county?

In this connection we are inclosing a copy of an opinion of a prosecuting attorney which seems to be contrary to the opinion of the Attorney General published in his 1922 report at page 1058."

Section 2830, General Code, reads in part as follows:

"The sheriff may appoint in writing one or more deputies. If such appointment is approved by a judge of the court of common pleas of the subdivision in which the county of the sheriff is situated, such approval at the time it is made, shall be indorsed on such writing by the judge.

Section 9 of the General Code, which is pertinent to your inquiry, reads in part as follows:

"A deputy, when duly qualified, may perform all and singular the duties of his principal. * * "

Section 2977, General Code, relative to the duties of the sheriff in regard to fees provides as follows:

"All the fees, costs, percentages, penalties, allowances and other perquisites collected or received by law as compensation for services by a county auditor, county treasurer, probate judge, sheriff, clerk of courts, surveyor or recorder, shall be so received and collected for the sole use of the treasury of the county in which they are elected and shall be held as public moneys belonging to such county and accounted for and paid over as such as hereinafter provided."

From a consideration of the above, it would seem that since the duty of a deputy sheriff in regard to fees is, by virtue of Section 9, the duty of the sheriff, it follows that all fees received by a duly appointed deputy sheriff should, pursuant to the requirement of Section 2977, General Code, be received and collected for the sole use of the treasury of the county in which such deputy serves.

It should further be noted that Section 2981, General Code, relative to the appointment of deputies, etc., to each probate judge, county auditor, sheriff, treasurer, etc., reads as follows:

"Such officers may appoint and employ necessary deputies, assistants, clerks, bookkeepers or other employes for their respective offices, fix their compensation, and discharge them, and shall file with the county auditor certificates of such action. Such compensation shall not exceed in the aggregate for each office the amount fixed by the commissioners for such office. When so fixed, the compensation of each duly appointed or employed deputy, assistant, bookkeeper, clerk and other employe shall be paid semi-monthly from the county treasury, upon the warrant of the county auditor. Each of such officers may require such of his employes as he deems proper to give bond to the state in an amount to be fixed by such officer with sureties approved

by him, conditioned for the faithful performance of their official duties. Such bond with the approval of such officer, indorsed thereon, shall be deposited with the county treasurer and kept in his office."

It is apparent from the foregoing section that if the sheriff intends that a deputy sheriff shall receive compensation, he has authority to so provide. The opinion of the Attorney General to which you refer, namely, Opinions of the Attorney General for 1922, p. 1058, in discussing the question of the disposition of fees collected by *de facto* sheriffs, states:

"As *de facto* deputies, however, any fees earned by them in serving the process issued to the sheriff must be paid into the county treasury as a part of the earnings of the sheriff's office. A *de facto* officer is held to the discharge of the same legal duties as a *de jure* officer; and because of the general principle above outlined, the fees earned by the contemplation of law are the fees of the sheriff, and he must account for them to the county treasurer."

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that a deputy sheriff appointed to serve without regular compensation is not entitled to any fees for the services rendered by him and such official fees accrue to the sheriff and must be by him turned into the county treasury in accordance with Section 2977, General Code.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4717.

APPROVAL, BONDS OF LAKE COUNTY, OHIO—\$35,000.00.

COLUMBUS, OHIO, November 1, 1932.

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

4718.

APPROVAL, BONDS OF CUYAHOGA FALLS CITY SCHOOL DIST.,
SUMMIT COUNTY, OHIO—\$22,000.00.

COLUMBUS, OHIO, November 1, 1932.

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