

I am of the opinion therefore, that the sections herein set forth are controlling as to the questions now before me, and that such reduction of capital stock, if approved by you, shall only be made after the same has been authorized by a two-thirds affirmative vote of the shareholders of the corporation.

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

1. Where a banking corporation has increased its capital stock, and such increase in the capital stock of the corporation has not been fully paid in within six months from the date when such increase was authorized, the Superintendent of Banks may, within his discretion, approve a reduction of the capital stock, providing however, that such approval shall not be given except upon a finding by him that the security of existing creditors of the corporation will not be impaired.

2. When the Superintendent of Banks has approved the reduction of capital stock of a banking corporation, as provided in Section 710-60 of the General Code, the corporation may reduce such capital stock by an amendment to its articles, as provided in Sections 8623-14 and 8623-15 of the General Code of Ohio. Such amendment may only be adopted by the affirmative vote of two-thirds of the holders of the shares of said corporation.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1385.

APPROVAL, BONDS OF LAKE COUNTY—\$3,413.96.

COLUMBUS, OHIO, January 11, 1930.

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

1386.

APPROVAL, BONDS OF HANNIBAL RURAL SCHOOL DISTRICT, MONROE COUNTY—\$1,600.00.

COLUMBUS, OHIO, January 11, 1930.

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

1387.

SALARIED VILLAGE MARSHAL—DOLLAR FEE AND MILEAGE FOR SERVING WARRANTS OF ARREST—POWER TO RETAIN SUCH FEES FROM STATE CASES—FEES IN ORDINANCE CASES PAYABLE INTO VILLAGE TREASURY.

**SYLLABUS:**

1. *A salaried village marshal may retain the dollar fee and mileage, as provided by Section 3347, General Code, for serving warrants of arrest, if the criminal case involved is one resulting from a violation of a statute.*

2. *A salaried village marshal may not retain the dollar fee and mileage, as provided by Section 3347, General Code, for serving warrants of arrest, if the criminal case involved is one resulting from a violation of an ordinance.*

COLUMBUS, OHIO, January 13, 1930.

HON. E. B. UNVERFERTH, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—I am in receipt of your recent communication which reads as follows:

“A village marshal of one of the smaller towns wants me to write to you concerning fees and mileage which are assessed in criminal cases. This particular marshal gets a salary of \$180.00 a year to begin on the first Monday in January, 1930. Is it possible for this marshal to keep the dollar fee for serving the warrant and the necessary mileage covered in the arrest of the defendant? I find under Section 4387 a holding to the effect that deputy marshals are entitled to retain the fees charged for such services for their personal use.

Kindly advise if this applies also to a salaried marshal.”

The following sections of the General Code are relevant to your inquiry, and provide (so far as pertinent) as follows:

“Sec. 4387. In the discharge of his proper duties, the marshal shall have like powers and be subject to like responsibilities as constables and for services actually performed by himself or his deputies, there shall be taxed the same fees and expenses as are allowed constables.”

“Sec. 4542. \* \* \* The marshal shall execute and return all writs and process to him directed by the mayor, \* \* \* . His jurisdiction, and that of his deputies, in the execution of such writs and process, in criminal cases, and in cases of violation of ordinances of the corporation, shall be co-extensive with the county, \* \* \* and in the execution of writs and process and the taxing of costs thereon shall be governed by the laws pertaining to constables.”

“Sec. 4556. The fees of the mayor, in all cases, shall be the same as those allowed justices of the peace, and the fees of the marshal, chief of police, and other police officer serving writs or process of the court, in all cases, shall be the same as those allowed constables.”

“Sec. 3347. 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, \* \* \* mileage for the distance actually and necessarily traveled in serving and returning any of the preceding writs, orders and notices, first mile, fifty cents and each additional mile, fifteen cents \* \* \* .”

“Sec. 4219. Council shall fix the compensation and bonds of all officers, clerks and employes in the village government, except as otherwise provided by law. \* \* \* ”

In connection with these sections, it is important to quote Section 4270 as it read prior to its last amendment in 112 O. L. 141 (1927). Said section 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 money 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 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."

From the provisions of Sections 4387, 4542 and 4556, supra, it is to be noted that the fees of a village marshal for serving warrants of arrest are the same as those provided for constables under the provisions of Section 3347, supra. It is also to be noted that the only change made by the amendment of Section 4270 in 112 O. L. 141 was the elimination of the underscored portion above.

In an opinion of the Attorney General, found in Opinions of the Attorney General for 1920, Vol. II, page 866, it was stated in the body of the opinion at page 867 :

"The law as found in Section 4270, G. C. ; read in connection with Section 4219, G. C. ; authorizes a village council to fix by ordinance the salaries of the mayor and marshal and further to allow these officers to retain their legal fees. These sections cover both salary and fees and are not ambiguous and require no rule of construction save what is the ordinary meaning of the language used therein."

However, it must be kept in mind that Section 4270 has been amended by the 87th General Assembly in 112 O. L. 141, as heretofore stated, since the rendition of said opinion, and the right of council to authorize the retention by the marshal of fees in ordinance cases has been eliminated from the provisions of the section. This office construed Section 4270, as amended, in an opinion found in Opinions of the Attorney General for 1928, Vol. I, page 228, as set forth in the first paragraph of the syllabus :

"Section 4270, General Code, as amended by the 87th General Assembly, requires the mayor of a municipality, whether a city or village, to pay all fees collected by him in ordinance cases and due him as such mayor, or to a marshal, chief of police or other officer of the municipality, into the treasury of the municipality on the first Monday of each month."

You do not state whether the criminal cases are state or ordinance cases. In the case of *State ex rel. vs. Nolte*, 111 O. S. 486, the court held, as disclosed by the third paragraph of the syllabus :

"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."

The amendment in 1927 in nowise affected this holding. Based on this decision,

a former Attorney General held in Opinions of the Attorney General for 1925, at page 16, as follows:

“Section 4270, General Code, does not apply to fees earned by a mayor, marshal or chief of police in state cases, but such fees should be paid to such officers for their personal use.”

To the same effect is an opinion of the Attorney General found in Opinions of the Attorney General for the year 1928, Vol. II, page 1088, the syllabus of which reads:

“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.”

If, however, you have reference to violations of criminal ordinances, a different situation exists. As I have already indicated, Section 4270, before its last amendment in 112 O. L. 141, provided that all fees in ordinance cases should be paid into the village treasury, except that council could authorize the retention of such fees by the marshal, but not his expenses. The amendment, as above stated, took away the right of council to authorize the retention of ordinance fees, and now all such fees must be paid into the village treasury.

Based on the foregoing, you are specifically advised that:

1. A salaried village marshal may retain the dollar fee and mileage, as provided by Section 3347, General Code, for serving warrants of arrest, if the criminal case involved is one resulting from a violation of a statute.

2. A salaried village marshal may not retain the dollar fee and mileage, as provided by Section 3347, General Code, for serving warrants of arrest, if the criminal case involved is one resulting from a violation of an ordinance.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

---

1388.

DIVISION OF ACCOUNTS AND CONTROL—CHIEF'S OFFICE WITHIN  
UNCLASSIFIED SERVICE.

SYLLABUS:

*The office of chief of the division of accounts and control created by virtue of the provisions of Section 154-8 of the General Code is in the unclassified civil service of the state by virtue of the provisions of Section 154-19 of the General Code.*

COLUMBUS, OHIO, January 13, 1930.

*The State Civil Service Commission of Ohio, Wyandotte Building, Columbus, Ohio.*

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

“Section 154-8 of the General Code of Ohio reads in part as follows:

‘With the approval of the Governor, the director of each department shall have authority to consolidate any two or more of the offices created in his department by Section 154-6 of the General Code, or to reduce the number of or create new divisions therein.’