

The section above quoted is similar in general aspects to our present Section 5322, General Code, herein quoted.

The county auditor refused the application of the college to transfer the real estate to the Young Men's Mercantile Association. An action in mandamus was brought against him to compel him to make the transfer and the court very properly stated in the dictum "The relator has the statutory right to be relieved from the payment of taxes on property it does not own and has conveyed to another * * *," and the writ was allowed.

I fail to see wherein this case has any applicability to short-term leases.

The adjustment of the taxes is a matter for the lessor and lessee, and not for the taxing authorities, and if the lessee attempts to remove the building from the real estate before all taxes charged against the particular real estate during the existence of the lease attempted are fully paid, such removal should be enjoined.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

3454.

FEES—MUNICIPAL COURT—POLICE COURT—COMMON PLEAS—JUROR—SECTION 1746 G. C.—PROVIDES SCHEDULE OF FEES CLERK POLICE COURT SHOULD CHARGE—COSTS TO SUMMON AND IMPANEL JURY NOT JURY FEE—SEPARATE ITEM.

SYLLABUS:

1. *The amount of fee which should be paid to a person serving as juror in the Police Court of the City of Cleveland Heights is the same as that paid to jurors in criminal cases in the Court of Common Pleas of Cuyahoga County.*

2. *The schedule of fees which the clerk of such police court should charge is as provided for in Section 1746, General Code.*

3. *The clerk of such court should file the transcript of the docket or journal entries, as well as such original papers as are necessary to exhibit the error complained of in the court to which an appeal is taken.*

4. *Costs of summoning and impanelling a jury may not be included as a jury fee. However, the costs should be treated as a separate item and*

should be charged and collected against the defendant in the event of conviction.

COLUMBUS, OHIO, December 28, 1938.

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

GENTLEMEN: This will acknowledge receipt of your letter of recent date wherein you request my opinion concerning five questions pertinent to the Municipal Court of Cleveland Heights, Ohio. The questions stated in your letter are as follows:

“Question 1. What is the amount of the fee which should be paid to each person serving as a juror in this Court?

Question 2. What is the schedule of fees which the Clerk should charge when requested to prepare a transcript for filing in a higher court in connection with the prosecution of error proceedings from this court?

Question 3. Upon the payment of the proper fee for preparing the transcript, is it the duty of the clerk to file the transcript in the higher court; or is it his duty only to deliver the transcript to the defendant or his attorney upon request?

Question 4. Is it permissible to include any part of the cost of summoning and impaneling a jury as a jury fee in the cost bill charged to the defendant in the event of conviction?

Question 5. In preparing the transcript, is it permissible for the Clerk to prepare copies of the original papers rather than forwarding the original papers themselves?”

An examination of Sections 1579-651 to 1579-665, inclusive, creating and establishing a Police Court of the City of Cleveland Heights discloses no provisions in such sections concerning the fees to be charged in connection with the duties performed by the officers therein provided. It becomes necessary, therefore, to consider certain other sections of the General Code in order to determine the questions presented by you.

Section 4579, General Code, relating to police courts generally, provides in part that jurors “shall receive the same fees as are allowed jurors in the court of a justice of the peace in criminal cases **.”

Section 13424-6, General Code, relating to prosecutions before magistrates where trial by jury is demanded, provides as follows:

“In such prosecutions, the jurors shall be entitled to the same mileage and fees as in criminal cases in the court of common pleas, and they shall be paid from the county treasury upon the certificate of the court.”

The fees to be paid to jurors in the court of common pleas in criminal cases are fixed by Section 11419-43, General Code, which provides that such fees “shall be fixed by order of the common pleas judge or judges of the county, not to exceed five dollars for each day’s attendance, and in addition thereto, said juror shall be allowed three cents a mile for each mile traveled by said juror by the nearest route from said juror’s place of residence to the county seat and return to home once a week, payable out of the county treasury.” It is quite apparent from the above that the judges of the court of common pleas of any county may fix the fee to be paid to a juror in any amount not to exceed five dollars for each day’s attendance, plus mileage. I am not informed as to the compensation fixed by the judges of the court of common pleas of Cuyahoga County for jurors serving in criminal cases. However, it is certain that such compensation cannot exceed the maximum prescribed in Section 11419-43, General Code.

It would seem, in answer to the first question presented by you, that under the provisions of Section 13424-6, supra, the jurors serving in a criminal case in the Police Court of Cleveland Heights should receive the fees similar to those paid to jurors serving in criminal cases in the court of common pleas of Cuyahoga County. The fees paid to jurors in criminal cases in the court of common pleas of Cuyahoga County are a matter of record and it is therefore an easy matter for the clerk of the Police Court of Cleveland Heights to determine the amount of such fees and pay persons serving as jurors in the Police Court of Cleveland Heights similar fees.

Your second question may be answered by referring to Section 3005, General Code, which provides in part as follows:

“In each municipality where a municipal court is provided by law the following fees, and no more, shall be taxed as part of the costs and be included in the judgment in all criminal proceedings:

FOR THE CLERK. The same fees provided for justices of the peace under Section 1746, General Code.

FOR THE BAILIFF. The same fees provided for constables under Section 3347, General Code. ***”

A reference to Section 1746, General Code, which prescribes a schedule

of fees of justices of the peace in criminal proceedings, indicates that a justice of the peace may tax as costs \$2.50 for "making transcript of docket including certificate."

Your third and fifth questions will be treated together for the purpose of this opinion. Section 1579-663, General Code, provides that proceedings in error may be taken from the Police Court of Cleveland Heights to the Court of Appeals of Cuyahoga County "from any judgment or final order of said police court in the same manner and under the same conditions as are provided by law for proceedings in error from the court of common pleas to the court of appeals."

A reference to the Appellate Practice Act, enacted in 116 O. L. 104, and effective January 1, 1936, prescribing the procedure for perfecting an appeal, reveals that in Section 12223-8, General Code, after the filing of a notice of appeal, "the clerk of the court from which the appeal is taken or a judge thereof, shall, upon being paid the lawful fees and the filing of a praecipe therefor, prepare and file in the court to which the appeal is taken, a transcript of the docket or journal entries, with such original papers or transcripts thereof as are necessary to exhibit the error complained of." It is quite apparent from the above that it is the duty of the clerk of the Police Court of Cleveland Heights to file the transcript of the docket or journal entries, as well as such original papers as are necessary to exhibit the error complained of in the court to which the appeal is taken.

Coming now to your fourth question, it is necessary once again to refer to Section 3005, *supra*. A reading of the provisions of this section clearly indicates that there is a distinction between jury fees and such fees as are required to be taxed as part of the costs in a criminal proceeding for services performed by the clerk of courts or bailiff in connection with a jury case. It must be borne in mind that in all criminal proceedings where the defendant has a jury trial persons are required to be summoned as jurors and such summons are served by the bailiff of the Police Court of Cleveland Heights, for which services certain fees are taxed as costs under the provisions of Section 3347, General Code.

Under Section 1746, General Code, the clerk of the police court is required to issue a venire for jury and docket the return thereof and give the jurors an oath, for all of which such clerk is required to tax as costs the fees provided for in the foregoing section. Such fees for the services rendered by the clerk or the bailiff are not in the true sense jury fees and therefore may not be included as a jury fee in the cost bill but should be treated as a separate item and should be charged and collected against the defendant in the event of con-

viction as provided for in Section 13451-18, General Code, which reads 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, and if a jury has been called to the trial of the case, a jury fee of \$..... shall be included in the costs, which, when collected, shall be paid to the public treasury from which the jurors were paid.”

The foregoing provision of the General Code, as it relates to the collection of a jury fee in criminal cases, was considered in Opinions of the Attorney General for 1930, Vol. II, page 865, wherein it was held as disclosed by the syllabus as follows:

“The legislature having failed to fix in Section 13451-18, General Code, the amount of jury fees which shall be included as costs, therefore, no authority exists to tax jury fees and include them in a judgment against a defendant in a criminal case.”

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3455.

COUNTY COMMISSIONERS, BOARD—COUNTY HIGHWAYS
—POWER TO OBLIGATE COUNTY FOR ERECTION AND
MAINTENANCE OF SIGN POSTS, WARNING AND
GUIDE SIGNS—NO POWER TO CONTRACT BEYOND
TERM OF INDIVIDUAL COMMISSIONERS—EXCEP-
TION—NECESSITY.

SYLLABUS:

1. *A Board of County Commissioners has the power to obligate the county for the erection and maintenance of sign posts and warning and guide signs on county highways.*
2. *A Board of County Commissioners does not have the power to make contracts for a period of time extending beyond the terms of the in-*