It is obvious that the Court of Common Pleas appointed the shorthand reporter in question under and by virtue of Section 1547, supra, and fixed his compensation as provided by Section 1550, supra.

I know of no law permitting a county to allow and pay any compensation to a shorthand reporter, except as provided for and authorized by Section 1550, supra. Nor is there any statute authorizing payment to a shorthand reporter of such expenses as railroad fare, meals, lodging and miscellaneous expenses in a case of the kind described in the letter from your examiner. In other words, the payment to such shorthand reporter over and above the amount authorized in the journal entry making the appointment was illegal and it is my opinion that a finding for the amounts so unlawfully paid should be made.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2703.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN COLUMBIANA, MERCER AND WILLIAMS COUNTIES.

COLUMBUS, OHIO, October 11, 1928.

HON. HARRY J. KIRK, *Director of Highways, Columbus, Ohio.*

2704.

APPROVAL, ABSTRACT OF TITLE TO LAND OF EDWARD CUNNINGHAM IN NILE TOWNSHIP, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, October 11, 1928.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date enclosing corrected abstract of title and a warranty deed signed by Edward Cunningham and wife covering certain land in Nile Township, Scioto County, Ohio, and more particularly described in Opinion No. 2367 of this department, dated July 18, 1928.

As noted in said former opinion above referred to, the only question of consequence presented on a consideration of the abstract of title arises from the fact that one of the deeds in the chain of title to the lands here in question was executed to a partnership in its firm name. As to this it appears that on and prior to May 28, 1897, the lands in question were owned in fee simple by one Andrew J. Miller. On said date, said Andrew J. Miller and Mary Miller, his wife, executed and delivered a warranty deed for said land to Wallenstein, Loeb, Freiberg and Company for a stated consideration of eight hundred dollars, but actually in satisfaction of a debt then owing by him to said partnership. Although it appears that the lands in question were con-

sidered by the members of said partnership as partnership property, the same were never used for partnership purposes and still stood in the name of said partnership upon the dissolution of the same by the death of Abraham Wallenstein, one of the partners, on September 15, 1904.

Thereafter, on February 23, 1928, a warranty deed was executed by Louis Loeb and Joseph Freiberg, surviving members of the old partnership, in which deed 'Wallenstein, Loeb, Freiberg and Company, partnership heretofore existing and consisting of Abraham Wallenstein, (now deceased) Louis Loeb and Joseph Freiberg' were named as grantors and 'Louis Loeb, Joseph Freiberg and the heirs at law, next of kin and devisees of Abraham Wallenstein, namely Mamie Efroymson and Birdie Vehon,' were named as grantees. On the same date, to-wit, February 23, 1928, said Louis Loeb, Joseph Freiberg and Bertha Freiberg, his wife, Mamie Efroymson and G. A. Efroymson, her busband, and Birdie Vehon and Henry Vehon, her husband, executed and delivered a warranty deed for said land to Edward Cunningham and to his heirs and assigns forever.

It appears from affidavits which have been made a part of the corrected abstract that the indebtedness of said partnership upon its dissolution in 1914 has long since been paid, as has likewise the indebtedness of the estate of Abraham Wallenstein, deceased.

Although as above noted, these lands after the conveyance thereof to said partnership were considered by the members of said firm as partnership property, it would seem that as a matter of law on the facts here stated such was not the status of the property. As to this it has been held that where real estate is purchased for partnership purposes, paid for with partnership funds and actually used in the partnership business the same shall be regarded as partnership assets; but that where such real estate is not needed or used for partnership purposes, it is not to be considered assets of the firm although paid for with partnership means. *Rammelsburg, et al.* vs. *Mitchell,* 29 O. S. 22.

In this situation as to the status of said lands, the further question here presented is with respect to the legal effect of the deed executed by Andrew J. Miller and wife to said partnership in the firm name, which as will be noted, included the surname of all the partners. In 30 Cyc. at page 431, it is said:

> "When the firm style contains the surnames of all the partners, a conveyance to the partnership in such style is generally held to pass the legal title to the individuals for the firm. If, however, the firm style contains the surnames of one, or more, but not all the partners, it has been held that a conveyance to the partnership in such style vests the legal title in the partner or partners whose names appear, but in trust for the firm; and such named partners can convey a valid title to the property."

In Thompson on Real Property, Vol. 4, Section 2993, it is said:

> "A deed to partners named, described as constituting a firm, conveys a legal title to such partners as tenants in common, though such title may be subject to partnership equities."

And in Section 2994 of the same authority, it is said:

> "If the partnership named contains the surname or surnames of one or more of the partners, the instrument will have legal effect as a conveyance or mortgage to the partner or partners thus named."

In the case of *Greene* vs. *Graham,* 5 Ohio, 264, the headnote of the case is as follows:

> "Land purchased with partnership funds and title taken to partners. One dies; Held, that the land was held as tenants in common, and the part of the deceased descended to his heirs, and, being sold under order of court, purchaser is entitled to partition."

In the case of *Weitz* vs. *Weitz,* 15 Ohio App. 134, it was held:

> "The interest of a deceased partner in real estate purchased with partnership assets, and managed and used by partnership as partnership property, the title to which is taken in the individual names of the several partners, in the absence of a partnership agreement to the contrary, passes to his heirs or devisees, unless needed to pay partnership obligations."

In this case the equities of the partnership as such have long since been satisfied; and I am inclined to the view that the deed executed by Louis Loeb, Joseph Freiberg and wife and by the heirs of Abraham Wallenstein and their respective husbands had the effect of passing the legal title to these lands to Edward Cunningham.

There are no mortgages or other encumbrances against this property noted in the abstract, and said Edward Cunningham has, in my opinion, a good and merchantable fee simple title to said lands subject only to the taxes for the year 1928, which of course are a lien.

The warranty deed of Edward Cunningham and Carol Cunningham, his wife, conveying the lands here in question to the State of Ohio has been properly executed and acknowledged, and is in form sufficient to convey to the State of Ohio a fee simple title to said lands free and clear of all encumbrances whatsoever.

Encumbrance Estimate No. 3397 submitted with said corrected abstract and deed has been properly executed and shows that there are sufficient balances in the proper appropriation account to pay the purchase price for said property. It likewise appears that the purchase of this property was authorized by the Board of Control at a meeting held by such board under date of April 23, 1928.

I am herewith returning said corrected abstract, warranty deed, encumbrance estimate and controlling board certificate.

Respectfully,
EDWARD C. TURNER,
Attorney General

2705.

CATTLE—TUBERCULIN TESTS—STATE BOARD OF AGRICULTURE—NO AUTHORITY TO PLACE MAXIMUM LIMIT ON INDEMNITY.

SYLLABUS:

The State Board of Agriculture is without authority under the provisions of Sections 1121-1 *to* 1121-25, *General Code, to adopt rules and regulations which limit the indemnity paid to owners of pure bred cattle affected with tuberculosis and condemned for slaughter to eighty dollars* ($80.00) *and which limit the indemnity paid to owners of grade cattle affected with tuberculosis and condemned for slaughter to fifty dollars* ($50.00), *and enforce the same.*