

1856.

APPROVAL, ARTICLES OF INCORPORATION OF THE FRIGIDAIRE
EMPLOYEES' BENEFIT ASSOCIATION OF DAYTON.

COLUMBUS, OHIO, March 16, 1928.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am returning to you herewith the articles of incorporation of the Frigidaire Employees' Benefit Association of Dayton, with my approval endorsed thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1857.

BASTARDY PROCEEDING—BEFORE JUSTICE OF THE PEACE—AU-
THORITY TO SECURE COSTS—COUNTY COMMISSIONERS UNAU-
THORIZED TO MAKE ALLOWANCE TO JUSTICE OF THE PEACE
FOR SUCH COSTS.

SYLLABUS:

1. *A justice of the peace is without authority to require the complainant in a bastardy proceeding to secure the costs unless such complainant be not a resident of the township in which such action is brought or unless, after commencing such action, the complainant removes out of the county.*

2. *A board of county commissioners is without authority to make an allowance to a justice of the peace for costs, which have accrued in a bastardy proceeding which terminated in the Court of Common Pleas by a verdict of "not guilty."*

COLUMBUS, OHIO, March 16, 1928.

HON. HARRY B. REESE, *Prosecuting Attorney, Jackson, Ohio.*

DEAR SIR:—This will acknowledge your letter dated March 10, 1928, which reads:

"I will appreciate your opinion upon the following questions:

1. May a J. P. require a deposit from the relatrix, a resident of the county in which the proceedings are started in bastardy proceedings?

2. May county commissioners allow a J. P. his costs in a bastardy case under G. C. 3019, or any other section, which case terminated in the Common Pleas Court by a verdict of not guilty?"

Section 12110, General Code, provides:

"When an unmarried woman, who has been delivered of, or is pregnant with a bastard child, makes a complaint in writing, under oath, before a

justice of the peace, or in juvenile court charging a person with being the father of such child, the judge or justice thereupon shall issue his warrant, directed to any sheriff, police officer or constable of the state, commanding him to pursue and arrest such accused person in any county therein, and bring him forthwith before such judge or justice to answer such complaint,"

Your attention is directed to the case of *State ex rel. May vs. Sheperd*, 1 O. N. P. (N. S.) 194; 15 O. D. 269. Judge Allread, who rendered the opinion of the court, said:

"Proceedings in bastardy partake in some respects of the nature of criminal, and in other respects, of civil proceedings. The complaint is by affidavit; the process is by arrest; the verdict is upon the guilt of the defendant; and execution of the judgment is awarded against the person of the defendant. In all other respects, however, the action is civil in its character. * * * The bastardy act is not complete in itself on the question of costs. It only provides for costs in two instances: (1) Where there is a compromise. (2) When the defendant is adjudged guilty. The question of costs in bastardy proceedings not being completely provided for in the act itself must be governed by some general statute; and from the general character of the proceedings the civil character on costs will control. Inasmuch as the complainant is a non-resident an order will be made requiring her to give security for costs and the proceedings will be stayed until such security be given."

See also the case of *Dimmitt et al. vs. State, ex rel. Milburn*, 112 O. S. 691, wherein, on page 698, Chief Justice Marshall said:

"It is true that the issues are made by affidavit, and not by petition and answer, and it is true that the form of verdict is guilty or not guilty, but it is also true that the relief sought is not punishment of the defendant, but to provide for the support and maintenance of the child, and to indemnify the public against the child becoming a public charge. The action is therefore criminal in form, but the relief sought and the ultimate end to be attained are clearly of a civil nature. It is not necessary to resort to refinements of reasoning to ascertain definitely the character of such a proceeding."

The headnote in the case of *State ex rel. Clutts vs. Dolan*, 20 O. N. P. (N. S.) 478, reads:

"A proceeding in bastardy is not a criminal, but a civil proceeding, in which the rule of a three-fourths jury verdict obtains."

I know of no section of the General Code which authorizes a justice of the peace to require security for the costs in civil actions brought before such justice of the peace other than Sections 10483 and 10484, General Code, which provides as follows:

Sec. 10483. "When a person is not a resident of the township in which he seeks to or does, begin an action before a justice of the peace, previous to issuing process, or prior to the trial, the justice may require such person to give security for the costs of suit. This may be done by depositing

such a sum of money as the justice deems sufficient to pay the costs, or by giving bond with surety approved by him to the adverse party, for the payment of costs which accrue in the action."

Sec. 10484. After commencing an action before a justice in the township to which he or they reside, if the party or parties plaintiff remove out of the county, the justice may require him or them to deposit a sum of money, equal to the costs accrued and that probably will accrue, or in place thereof, to give sufficient surety for all costs accrued, or which may accrue in the action. In default of either, he shall dismiss the action."

Obviously Section 13499, General Code, which reads:

"When the offense charged is a misdemeanor the magistrate, before issuing the warrant, may require the complainant, or if he considers the complainant irresponsible, may require that he procure a person to become liable for the costs if the complaint be dismissed, and the complainant or other person shall acknowledge himself so liable and such magistrate shall enter such acknowledgment on his docket. Such bond shall not be required of a sheriff, deputy sheriff, constable, marshal, deputy marshal, watchman or police officer, when in the discharge of his official duty."

has no application to the question that you present for the reason that a bastardy complaint does not charge a misdemeanor.

By the terms of Section 10483, supra, a justice of the peace, previous to issuing process or prior to trial, may require of a person *not a resident of the township* in which such person seeks to or does bring an action to give security for the costs of suit. As provided by Section 10484, supra, if, after commencing an action before a justice of the peace in the township in which he or they reside, if the party or parties plaintiff remove out of the county, the justice of the peace may require him or them to secure the costs which have accrued or may accrue in such action.

In view of the foregoing and answering your first question specifically, it is my opinion that a justice of the peace is without authority to require the complaint in a bastardy proceeding to secure the costs, unless such complainant be not a resident of the township in which such action is brought or unless, after commencing such action, the complainant removes out of the county.

In answer to your second question your attention is directed to Section 3019, General Code, which provides:

"In felonies wherein the state fails, and in misdemeanors wherein the defendant proves insolvent, the county commissioners, at the first meeting in January, shall make an allowance to justices of the peace and constables, in the place of fees, but in no year shall the aggregate allowance to such officer exceed the fees legally taxed to him in such causes, nor in any calendar year shall the aggregate amount allowed such officer and his successor, if any, exceed one hundred dollars. If there be a successor, said amount shall be prorated on the basis of lost fees."

You will note that the provisions of Section 3019, supra, are applicable only to felonies wherein the state fails and misdemeanors wherein the defendant proves insolvent.

There is no section of the General Code authorizing a board of county commissioners to make an allowance to a justice of the peace for costs, which have

accrued in a bastardy case which terminated in the Court of Common Pleas by a verdict of "not guilty."

Answering your second question specifically it is my opinion that a board of county commissioners is without authority to make allowance to a justice of the peace for costs that may have accrued in a bastardy proceeding which terminated in the Court of Common Pleas by a verdict of "not guilty".

Respectfully,
EDWARD C. TURNER,
Attorney General.

1858.

APPROVAL, BONDS OF GRANDVIEW HEIGHTS VILLAGE SCHOOL DISTRICT, FRANKLIN COUNTY—\$4,000.00.

COLUMBUS, OHIO, March 16, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

1859.

APPROVAL, NOTES OF JACKSON RURAL SCHOOL DISTRICT, SHELBY COUNTY, OHIO—\$98,000.00.

COLUMBUS, OHIO, March 16, 1928.

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

1860.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE LIMA CONSTRUCTION COMPANY, LIMA, OHIO, FOR THE CONSTRUCTION OF A STABLE AT THE STATE ARMORY, LIMA, OHIO, AT AN EXPENDITURE OF \$12,315.00.

COLUMBUS, OHIO, March 16, 1928.

HON. FRANK D. HENDERSON, *Adjutant General of Ohio, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State