

case, provided the justice making the appointment makes a memorandum thereof on his docket, any person so appointed would be entitled to the regular fees for services rendered pursuant thereto. Such fees are money due to the officer for services performed.

Section 3332 of the General Code provides:

“After taking such oath, the person so appointed, shall have the same authority, be subject to the same penalties, and entitled to the same fees, as other constables.”

Section 3019 of the General Code 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. * * * ”

In answer to your second question it is my opinion that a special constable appointed by a justice of the peace for a special purpose under provisions of Section 3331 of the General Code, may legally receive an allowance in lieu of fees in felonies wherein the State fails, and misdemeanors wherein the defendant proves insolvent, as provided by Section 3019 of the General Code, provided the justice making said appointment made a memorandum on his docket of the special appointment in said particular case.

Respectfully,
EDWARD C. TURNER,
Attorney General.

23.

APPROVAL, FINAL RESOLUTION, ROAD IMPROVEMENT IN JEFFERSON COUNTY, I. C. H. NO. 7, SECTION M-2.

COLUMBUS, OHIO, January 25, 1927.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

24.

JOINT BOARD OF COUNTY COMMISSIONERS—UNDER SECTIONS 6930 ET SEQ., G. C., MAY CONSTRUCT AND IMPROVE ANY PART OR ALL OF COUNTY LINE ROAD LYING WITHIN MUNICIPALITY—AUTHORITY FROM COUNCIL UNDER SECTION 6949 G. C.

SYLLABUS:

A joint board of county commissioners when acting under authority of Section

6930 *et seq.*, *General Code*, may in the construction and improvement of a county line road improve any part or all of the road lying within a municipality, provided such joint board first obtains the authority to improve such road from the council of such municipality, as provided in Section 6949, *General Code*.

COLUMBUS, OHIO, January 25, 1927.

HON. JOHN E. PRIDDY, *Prosecuting Attorney, Hancock County, Findlay, Ohio.*

DEAR SIR:—I beg to acknowledge receipt of your letter of January 12, 1927, in which you state:

“Seneca county and Hancock county through a joint Board of Commissioners are proceeding to improve a county line road between the two counties. A portion of this road is in the municipality of Fostoria. The joint board is about to enter into an agreement with the municipality for the improvement of the portion of the county line road lying within the municipality, Hancock County agreeing to pay for four feet and Seneca County for a like amount in the center of the highway and the rest of the pavement or improvement to be paid by the City of Fostoria.”

and in which you propound the following query:

“The question arises as to whether a joint Board of Commissioners, as constituted under Section 6930 and the following sections of the statute relating thereto, can in the construction and improvement of a county line road improve any part or all of the road lying within a municipality.”
Section 3714 of the *General Code* provides:

“Municipal corporations shall have special power to regulate the use of the streets, to be exercised in the manner provided by law. The council shall have the care, supervision and control of public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts, within the corporation, and shall cause them to be kept open, in repair, and free from nuisance.”

Your attention is directed to an opinion of my predecessor, found in *Opinions of the Attorney General for 1919, Volume 1, page 661*, wherein it was held, as shown by the syllabus of the opinion:

“Section 6949 G. C. does not authorize county commissioners to undertake the improvement, or to join with the municipality to undertake the improvement of a municipal street forming no part of the state or county highway.”

Also, as shown by opinion on page 622, as follows:

“It is therefore quite evident that the legislative intent in amending Section 6949, *General Code*, was not to confer general power on the commissioners to improve any street within a municipality, but merely to give them power to enter a municipality with consent of the council thereof for the purpose of such road improvement as might be necessary to connect or complete county or state road improvements. In Section 6949, the terms ‘into, within or through’ are used conjunctively, and in that sense are certainly plainly to

the effect that the proposed road improvement must be such an improvement as the commissioners are authorized generally to construct, special power being conferred in certain necessary instances to conduct the improvement into, within or through a municipality. Further support of this construction may be found in the last sentence of Section 6952, General Code, reading as follows:

"The word "road," as used in Sections 6906 to 6953 inclusive of the General Code, shall be construed to include any state or county road or roads, or any part thereof, and any city or village street or streets, or any part thereof, which form a continuous road improvement'."

Section 6930 G. C. provides the steps to be taken when an improvement is located in two or more counties or along the county line between two or more counties as in the question here.

Sections 6931 and 6932 create a joint Board of County Commissioners when a proposed improvement lies along the county line between two counties.

Section 6942 G. C. provides:

"All the provisions of the statute relating to improvements wholly within one county shall when applicable, unless otherwise specially provided, apply to improvements authorized by a joint Board of Commissioners."

The foregoing section, considered in connection with the powers given county commissioners under Section 6906 of the General Code, gives to a joint Board of Commissioners acting under the provisions of said Section 6930 et seq., the same rights and powers to improve the county line road lying within a municipality as the statutes give to a single Board of Commissioners, constructing a highway within its own county. Section 6949, General Code, makes the obtaining of the consent of council of a municipality through which the proposed county road passes, a condition precedent to action by such joint board in improving said road into or through such municipality.

Respectfully,
EDWARD C. TURNER,
Attorney General.

25.

TREASURER MUNICIPAL CORPORATION—CUSTODIAN SECURITIES
PURCHASED WITH FUNDS OF FIREMEN'S PENSION FUND AND
POLICE PENSION FUND—TRUSTEES MAY NOT DESIGNATE OTHER
CUSTODIAN.

SYLLABUS:

The treasurer of a municipal corporation is the custodian of securities purchased with the funds of the Firemen's Pension Fund and the Police Pension Fund and the trustees of these funds may not designate any other person to be custodian of these securities.

COLUMBUS, OHIO, January 26, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your communication of recent