

2400.

JUDGMENT—ERRONEOUS AMOUNT—EXCESS ABATABLE BEFORE FINAL SETTLEMENT.

SYLLABUS:

Where judgment has been taken by a village in a suit based upon a report of the Bureau of Inspection and Supervision of Public Offices against a defendant, for an amount which later develops before payment to be erroneous, the excess amount may be abated at any time before final settlement of the judgment.

COLUMBUS, OHIO, July 30, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your letter under date of July 20, 1928, which reads:

“We are enclosing herewith a letter from Mr. David L. Rupert, one of the examiners of this Department, concerning a finding made against certain contractors for an over-payment on the contract for the construction of water mains in the Village of Maple Heights in Cuyahoga County.

You will note that the amount of the finding was \$993.49 plus \$59.61 interest, or a total of \$1,053.10. You will also note that the Village brought suit for the collection of this finding and obtained judgment for the full amount. The contractors now seek to have the finding and judgment compromised on the basis of an error made by the Village Engineer in preparing the final estimate on the contract. The examiner includes in his letter a copy of a letter received from the Village Engineer, acknowledging an error in the final estimate in the sum of \$298.44. In other words, had the error not been made, the finding would have been \$695.05 plus interest, instead of \$993.49 plus interest.

You will note that the examiner recommends a compromise on the basis of \$695.05 plus interest from the date of over-payment until said compromised finding is paid. He, also, stated that the contractors agree to pay \$695.05 without interest.

Please advise this department whether you would consent to the compromise of the finding, either upon the basis of \$695.05 plus interest, or on the basis of \$695.05 without interest.”

The letter of Mr. Rupert, your examiner, which you enclosed, reads in part as follows:

“* * * Upon our request the village engineer furnished us with a copy of the corrected final estimate which we have checked and also inspected the plans, profiles, blueprints, etc., in the said engineer’s office, and it would appear from the revised estimate furnished, that an error was made by the engineer in the original final estimate and in support of this we have requested said engineer to furnish us a letter in which he admits making the discrepancy. A copy of said letter follows:

CLEVELAND, OHIO, July 17, 1928.

MR. D. L. RUPERT, *State Examiner, County Prosecutor’s Office, Cleveland, Ohio.*

DEAR SIR:—An error was made in our final estimate No. 7, dated May

2nd, 1923, and final estimate No. 7-A, dated June 6th, 1923, to John A. McDace and John T. Martin for constructing water mains in Dunham Road, Rockside Road, Kohout Street, Raymond Street and Royal Street for the Village of Maple Heights and same has been revised and corrected as shown on final estimate No. 7-B, dated August 1st, 1927.

Yours very truly,

C. W. COURTNEY, *Village Engineer*,

By: E. I. WITT (Signed).

Sworn to and subscribed before me a Notary Public, this 17th day of July, 1928.

EARLE KOHLER, (Signed)
Notary Public.

After fully considering the above statements and rechecking the new estimate, also we are advised that the actual cost of said improvement, per the revised estimate, was assessed against benefited property, I would recommend that a compromise be made by a reduction in said finding for recovery from \$1,053.10 to \$695.05 plus interest on said finding from date of overpayment until said compromised finding is paid, unless in your opinion it would be policy to omit the matter of interest which would make the net finding to be paid, as stated above \$695.05, which the contractor agrees to pay."

From the above correspondence it appears that the judgment, to which you refer, for the sum of \$1,053.10, is \$298.44 higher than it should be, and that such judgment has not yet been paid. Manifestly it would not be right or just to collect more than what is actually due the Village of Maple Heights.

Provision is made in Section 286, General Code, for abatement or compromise of a claim against any person, based upon a finding by the Bureau of Inspection and Supervision of Public Offices, on the Attorney General first giving his written approval thereof.

The pertinent part of Section 286, General Code, reads:

"No claim for money or property found in any such report to be due to any public treasury or custodian thereof in any such report shall be abated or compromised either before or after the filing of civil actions, by any board or officer or by order of any court, unless the attorney general shall first give his written approval thereof."

In view of the fact that, as stated by your Bureau, there is error in the amount for which judgment was entered, upon the recommendation of your Bureau that the amount of the judgment be abated to the extent of \$298.44, I will approve a settlement with the defendants, for the sum of \$695.05, plus six per cent interest thereon from the date of the overpayment to the date of settlement.

Respectfully,

EDWARD C. TURNER,
Attorney General.