

2014.

APPROVAL, BONDS OF TRUMBULL COUNTY, OHIO, IN AMOUNT OF
\$18,000 FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, April 20, 1921.

Industrial Commission of Ohio, Columbus, Ohio.

2015.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS,
LORAIN COUNTY, OHIO.

COLUMBUS, OHIO, April 21, 1921.

HON. LEON C. HERRICK, *State Highway Commissioner, Columbus, Ohio.*

2016.

APPROVAL, REFUNDING BONDS OF WESTON VILLAGE SCHOOL
DISTRICT IN AMOUNT OF \$15,000.

COLUMBUS, OHIO, April 22, 1921.

Industrial Commission of Ohio, Columbus, Ohio.

2017.

COURT STENOGRAPHER—NOT AUTHORIZED TO RECEIVE COMPEN-
SATION FROM PUBLIC FUNDS FOR TRANSCRIBING COURT'S
CHARGE TO JURY FOR USE OF COURT IN CONNECTION WITH
OTHER CASES.

Where an official court stenographer transcribes the court's charge to the jury for the use of the court in connection with other causes aside from the proceedings in which the record was taken, there is no authority whereby said stenographer may receive compensation from public funds for said services other than that provided in section 1550 G. C.

COLUMBUS, OHIO, April 22, 1921.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Your department has submitted, through the supervisor of Examiners, Mr. John A. Bliss, for an opinion, the following:

"In some counties it is the practice of the official stenographer to make shorthand notes of the opinion of the court of the charge to the jury at the

time of its delivery, and afterwards, at the direction of the court, to make transcripts of such opinions or charges for the use of the court in other matters than cases so tried. In some instances, the order for said transcripts is not made for several years after the cases have been tried and the costs paid.

The particular cases which we have in mind were tried by a foreign judge, and the transcripts taken to his home county for use there.

How shall the stenographer be paid for making such transcripts and may such payments be taxed in the costs of the case and collected from the judgment debtor?"

Section 1546 G. C. provides for the appointment of an official court stenographer, and the following section provides for the appointment of assistants, when necessary.

Section 1548 G. C., which relates to the duties of such stenographer, provides:

"Upon the trial of a case in any of such courts, if either party to the suit, or his attorney, requests the services of a stenographer, the trial judge shall grant the request, or such judge may order a full report of the testimony or other proceedings, in which case such stenographer shall cause accurate shorthand notes of the oral testimony or other oral proceedings to be taken, which notes shall be filed in the office of the official stenographer and carefully preserved."

Other sections of the General Code important to consider in connection with your inquiry are as follows:

"Sec. 1549. In every case so reported, there shall be taxed for each day's service of the official or assistant stenographers a fee of four dollars, to be collected as other costs in the case. The fees so collected shall be paid quarterly by the clerk of the court in which such case was tried, into the treasury of such county, and credited to the general fund."

"Sec. 1550. Each such stenographer shall receive such compensation as the court making the appointment shall fix, not exceeding twenty-four hundred dollars each year in counties where two or more judges of the common pleas court hold court regularly, and in all other counties not more than eighteen hundred dollars. * * *"

"Sec. 1551. When shorthand notes have been taken in a case as herein provided, if the court, either party to the suit, or his attorney, requests transcripts of all or any portion of such notes in longhand, the stenographer reporting the case shall cause full and accurate transcripts thereof to be made for the use of such court or party."

"Sec. 1552. The compensation of stenographers for making such transcripts shall be not more than eight cents per folio of one hundred words, to be fixed by the common pleas judges of the subdivision. Such compensation shall be paid forthwith by the party for whose benefit a transcript is made. The compensation for transcripts made in criminal cases, by request of the prosecuting attorney or the defendant, and transcripts ordered by the court in either civil or criminal cases, shall be paid from the county treasury, and taxed and collected as other costs. The clerk of the proper court shall certify the amount of such transcripts, which certificate shall be

a sufficient voucher to the auditor of the county, who shall forthwith draw his warrants upon the county treasurer in favor of such stenographers."

"Sec. 1553. When ordered by the prosecuting attorney or defendant in a criminal case, or when ordered by the court for its own use, in either civil or criminal cases, the costs of such transcripts shall be taxed as costs in the case, collected as other costs, and paid by the clerk of the proper court, quarterly, into the treasury of such county, and credited to the general fund. When more than one transcript of the same testimony or proceedings is ordered at the same time by the same party, or by the court, the compensation for making such additional transcript shall be one-half the compensation allowed for the first copy, and shall be paid for in the same manner. All such transcripts shall be taken and received as prima facie evidence of their correctness. When the testimony of witnesses is taken before the grand jury by such stenographers, as provided by law, they shall receive for such transcript as may be ordered by the prosecuting attorney the same compensation per folio and be paid therefor in the manner herein provided."

From an analysis of the foregoing sections it would appear that a court has authority to order a transcript of the record for its use in its official capacity in connection with its consideration of the case in which the record of the proceedings was taken. Under such circumstances the stenographer is entitled to receive not to exceed eight cents per folio of one hundred words, as provided in section 1552 G. C., supra, for making such transcript. This of course is in addition to the compensation provided for in section 1550 G. C., supra. It is further provided in section 1553 G. C., supra, that the cost of such a transcript "shall be taxed as costs in the case, collected as other costs, and paid by the clerk of the proper court, quarterly, into the treasury of such county, and credited to the general fund." While the statute authorizing a court to order a transcript does not fix a time limit within which such order must be made, the sections fixing the method of payment and taxing of costs necessarily imply that such transcript is to be used in connection with a pending proceeding. It therefore would logically follow that when a final order has been made by a court and it has no further duties to perform or jurisdiction to exercise in connection with a given cause, there is no provision to authorize the taxing of such a transcript as "costs." The law does not contemplate that the litigants of one suit shall bear the expense of obtaining a transcript to be used in connection with another cause, notwithstanding the same might be very desirable and enlightening to the court.

In connection herewith you are referred to an opinion heretofore rendered by this department, found in Opinions of the Attorney-General for the year 1920, page 235, the syllabus of which reads:

"A court stenographer can not legally make a charge for services rendered to a court in the preparation of its opinion preliminary to its being rendered, and such a charge can not be properly taxed as costs."

The following is quoted from the body of said opinion:

"While primarily the duty of a court stenographer is to take shorthand notes of oral testimony, or other oral proceedings in the trial of a case, it is believed said section (1550 G. C.) contemplates the performance of other duties under the orders of the court."

In your statement of facts you say that the cases you have in mind were tried