

Section 4053, General Code, in excess of \$500.00, except the awarding thereof be upon the approval of the Board of Control.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

2038.

CRIMINAL LAW—DEFENDANT NOT LIABLE FOR COSTS WHEN ACQUITTED OF VIOLATION OF SECTION 12604-3, GENERAL CODE—CIRCUMSTANCES UNDER WHICH COMPLAINING WITNESS LIABLE FOR COSTS CONSIDERED.

**SYLLABUS:**

*No authority exists for the payment of costs in case of an acquittal in a criminal prosecution for violation of Sections 12604 to 12604-3, inclusive, of the General Code. However, a complaining witness other than an officer authorized to make arrests when in the discharge of his official duties or other person or officer authorized to assist the prosecuting attorney in the prosecution of offences may be liable for costs in case of an acquittal, if the magistrate requires such complaining witness to give security for costs.*

COLUMBUS, OHIO, June 26, 1930.

HON. MICHAEL B. UNDERWOOD, *Prosecuting Attorney, Kenton, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which is as follows:

“I received the following from the superintendent of schools at Ada, Ohio:

‘Owing to the costs growing out of the matter of arresting motorists who violate statute by passing school busses when they are brought to a stop, will you please send us the opinion of the Attorney General as to the responsibility at this point?’

I have advised Mr. C. that it being a violation of the provisions of Section 12604-5, the offense is a misdemeanor and will be governed by the provisions of Section 13499 as to the depositing of costs.”

On April 6, 1929, the 88th General Assembly passed House Bill No. 149, which act regulates the operation of vehicles approaching school busses receiving or discharging passengers. This act is contained in Sections 12604 to 12604-3, inclusive, General Code. This penalty provided for a violation of the provisions of this act is as follows:

“Whoever, being the driver of a vehicle or school bus, fails to carry out the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten nor more than one hundred dollars or be imprisoned in the county jail not to exceed thirty days, or both.”

You will note that a violation of the provisions of this act constitutes a misdemeanor.

Under the provisions of Section 13451-18, General Code, a magistrate is authorized in cases of conviction to include the costs of prosecution in a judgment rendered

against a defendant. However, in cases of acquittal, no authority exists in cases involving the violation of the sections in question for the payment of costs.

Your attention is directed to Section 13432-20 General Code, which provides:

“When the offense charged is a misdemeanor, the magistrate or court before issuing the warrant, may require the complainant, or if he consider the complainant irresponsible, may require that he procure a person, to be liable for the costs if the complaint be dismissed, and the complainant or other person shall acknowledge himself so liable, and such court or magistrate shall enter such acknowledgement on his docket. Such bond shall not be required of an officer authorized to make arrests when in the discharge of his official duty, or other person or officer authorized to assist the prosecuting attorney in the prosecution of offenders.”

You will note from a reading of this section that a complaining witness, upon giving security for costs, may be liable for the costs of prosecution if the complaint is dismissed. Therefore, by virtue of the provisions of this section, costs may be collected in cases of acquittal, from a complaining witness who has given security for costs.

In specific answer to your inquiry, I am of the opinion that no authority exists for the payment of costs in case of an acquittal in a criminal prosecution for violation of Sections 12604 to 12604-3, inclusive, of the General Code. However, a complaining witness other than an officer authorized to make arrests when in the discharge of his official duties, or other person or officer authorized to assist the prosecuting attorney in the prosecution of offences, may be liable for costs in case of an acquittal, if the magistrate requires such complaining witness to give security for costs.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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2039.

TOWNSHIP TRUSTEE—SUPERVISING ROAD IMPROVEMENT FINANCED BY GAS TAX FUNDS—COMPENSATION IN EXCESS OF \$250.00 LIMIT FOR TOWNSHIP SERVICES UNAUTHORIZED.

**SYLLABUS:**

*A township trustee, in the performance of his duties in connection with the improvement of roads by the use of the gasoline tax moneys provided for under Section 5541-8 of the General Code, is engaged in the business of the township and may not receive compensation for such services in excess of the limitations provided in Section 3294 of the General Code.*

COLUMBUS, OHIO, June 27, 1930.

HON. CHARLES O. CHAPMAN, *Prosecuting Attorney, McArthur, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“Some of the township trustees in this county have asked me if they cannot receive pay for superintending the improvement of highways under the provisions of Section 5541-8 of the General Code of Ohio, even where