

poration, which has been charged with the minimum fee of fifteen dollars and thereafter, during the year for which said tax was paid, has been placed in the hands of a receiver, is not entitled to any adjustment of such fee.

Respectfully,
EDWARD C. TURNER,
Attorney General.

46.

JUDGMENT OF MUNICIPAL COURT FOR VIOLATION OF ORDINANCE—
REVERSED IN COMMON PLEAS COURT—PLAINTIFF IN ERROR EN-
TITLED TO RECOVER ALL COSTS, INCLUDING COST OF COMPLETE
CERTIFIED TRANSCRIPT OF RECORD.

SYLLABUS:

When a judgment of conviction for violation of a municipal ordinance by the municipal court of Dayton is reviewed on error proceedings in a court of common pleas and the judgment of the lower court is reversed and final judgment entered¹ against the city and the plaintiff-in-error ordered to recover his costs, the plaintiff-in-error is entitled to recover all court costs incurred to secure such reversal and therefore to any fee that he may have paid, under provisions of Section 13752, supra, for a complete certified transcript of the record.

COLUMBUS, OHIO, February 3, 1927.

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

GENTLEMEN:—I am in receipt of your communication of recent date which is as follows:

“Cases tried in the criminal division of the Dayton Municipal Court are often carried up to the Court of Common Pleas. In such cases the person appealing requests a transcript for which a fee is paid to the city to cover the cost of its preparation. In cases reversed by the higher court the defendant is ordered to recover his costs and all things lost by him from the city. Attorneys for defendants demand that the city refund the amount paid for the transcript.

There being some doubt as to whether the amount paid for such transcripts is a part of the legal cost to be recovered, the bureau will greatly appreciate your views in connection therewith.”

You further inform this office that your question is confined solely to a *transcript of the record* necessary to perfect error proceedings in a criminal charge based upon a violation of a municipal ordinance.

Section 1579-53, General Code, relating to the Municipal Court of Dayton, reads as follows:

“The municipal court shall have jurisdiction of all misdemeanors and of all violations of city ordinances of which police courts in municipalities now have or may hereafter be given jurisdiction. In felonies the municipal court shall have the powers which police courts in municipalities now have or may hereafter be given.”

The powers and duties of the clerk of the municipal court of Dayton are set out in Section 1579-75, General Code, which reads in part as follows:

"* * * He shall pay over to the proper parties all moneys received by him as clerk; he shall receive and collect all costs, fines and penalties; and shall pay the same quarterly to the treasurer of the city of Dayton and take his receipt therefor. But money deposited as security for costs shall be retained by him pending the litigation; * * *"

Section 1579-84, General Code, provides in part as follows:

"* * * The council of the city of Dayton, by ordinance, shall provide for one or more official stenographers and fix their compensation and provide for the payment of the same out of the city treasury. Stenographers shall be appointed by the judges of the municipal court and serve at their pleasure. The court shall regulate the charge for transcripts of testimony and the receipts therefor shall be paid to the clerk and by him accounted for as in the case of costs paid in."

Sections 13751, 13752, and 13755 of the General Code, respectively provide as follows:

"Sec. 13751. In a criminal case including a conviction for a violation of an ordinance of a municipal corporation, the judgment or final order of a court or officer inferior to the common pleas court may be reviewed in the common pleas court; * * *"

"Sec. 13752. On application by or on behalf of the accused, to an officer required to make a record or docket entries in such case, and upon tender of the proper fee, such officer shall make and deliver to such accused or his counsel a complete certified transcript of the record, omitting, if so requested, a bill of exceptions therefrom * * *"

"Sec. 13755. Upon the hearing of a petition in error, the court may affirm the judgment or reverse it, in whole or in part, and order the accused to be discharged or grant a new trial. If the judgment be reversed, the plaintiff in error shall recover from the defendant in error all court costs incurred to secure such reversal, including the cost of bills of exceptions and transcripts. * * *"

Section 3026, General Code, provides:

"On the rendition of judgment in any cause the costs of the party recovering * * * shall be carried into his judgment * * *"

And Section 3025 reads as follows:

"In all actions, motions and proceedings, in any of the courts of this state, the costs of the parties shall be taxed and entered of record separately."

It was held in the case of *Martin vs. Clinton Co.*, 8 O. N. P. 390, that this last section applied to both civil and criminal cases.

Costs were unknown to the common law, and no costs whatever were recoverable. The right to recover costs is purely statutory; and the term "costs" has a legal significance and includes only "taxable costs." The only costs "which shall be carried into" a judgment are "taxable" costs."

Provision is made in a criminal case by Section 13752, supra, for the accused to obtain a complete certified transcript of the record and a bill of exceptions, if he so requests, providing he makes application to the proper officer required to make a record in such case and tenders the proper fee therefor.

The costs so incurred by an accused are "taxable" costs and, as provided in Section 3025 of the General Code, are taxed and entered of record in the costs bill of said case. Only such costs as appear or as properly should appear in the costs bill may be recovered by said plaintiff in error upon reversal and, any items of expense that the plaintiff in error incurred may be recovered *providing such expenses incurred were "taxable" costs.*

If, upon error proceedings, the reviewing court reverses the judgment of the lower court and renders judgment against the defendant in error for the costs, by the provisions of Sections 3026 and 13755, supra, the costs of the plaintiff in error are carried into his judgment.

In the question that you present the fee for a transcript of the record under Section 3025 of the General Code, are taxed and entered of record in the costs bill an amount so expended because the expense so incurred was a proper court cost.

Answering your question specifically it is my opinion that when a judgment of conviction for violation of a municipal ordinance by the municipal court of Dayton is reviewed on error proceedings in a court of common pleas and the judgment of the lower court is reversed and final judgment entered against the city and the plaintiff in error ordered to recover his costs, the plaintiff in error is entitled to recover all court costs incurred to secure such reversal and therefore to any fee that he may have paid, under provisions of Section 13752, supra, for a complete certified transcript of the record.

Respectfully,
EDWARD C. TURNER,
Attorney General.

47.

APPROVAL, FINAL RESOLUTION ON ROAD IMPROVEMENT, I. C. H.,
No. 334, RICHLAND COUNTY.

COLUMBUS, OHIO, February 4, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works,*
Columbus, Ohio.

48.

APPROVAL, FINAL RESOLUTION, I. C. H. NO. 269, SECTION C, SUPPLEMENTAL, SENECA COUNTY, PROPOSAL NO. 1 AND NO. 2.

COLUMBUS, OHIO, February 4, 1927.

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