

Casualty and Surety Company as surety, the power of attorney for its signer, its financial statement and certificate to do business in the State of Ohio.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other papers submitted in this connection.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

2527.

COUNTY OWNED MOTOR VEHICLES—UNDER SECTION 2983 G. C.—CLERKS OF COURTS SHALL NOT EXACT FROM COUNTY OFFICERS FEES REQUIRED BY SECTION 6290-15, G. C. FOR ISSUING CERTIFICATE OF TITLE, NOTATION, CANCELLATION OF LIEN.

SYLLABUS:

By virtue of Section 2983, General Code, clerks of courts shall not exact from county officers fees provided for in Section 6290-15 of the General Code, for services rendered in the issuing of certificates of title, memorandum certificates or for the notation or cancellation of a lien on a certificate of title covering county owned motor vehicles. (Opinion No. 5136 rendered February 3, 1936, approved and followed.)

COLUMBUS, OHIO, May 31, 1938.

HON. KARL T. STOFFER, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR: Acknowledgment is made of your recent communication wherein you request my opinion on the following:

“Concerning the recent certificate of title law, our Clerk of Courts has requested an opinion as to whether or not he shall charge county offices the regular fee on certificate of titles. Of course, it is apparent he shall charge township trustees, but it would seem that in accordance with the opinion of your predecessor rendered on February 3, 1936, and known as Number 5136, all county offices are exempt from payment of fees for certificate of title.

The County Commissioner's office has paid \$1.50 for certificate of title for a county car, and the Commissioners have re-

quested the Clerk of Courts to refund this \$1.50 for the reason they maintain county offices need not pay the fees for certificate of title on county cars.

Is the opinion rendered by your predecessor to my predecessor applicable to the new certificate of title law?"

Section 6290-15 of the General Code, a statute comprising a part of the recently enacted Certificate of Title Law provides as follows:

"The clerk of courts shall charge a fee of twenty-five cents for each memorandum certificate and seventy-five cents for each certified copy of a certificate of title. Such fees shall be retained by the clerk of courts.

In addition to the foregoing fees, the clerk of courts shall charge a fee of seventy-five cents for each certificate of title, a fee of thirty cents for each notation of any lien on a certificate of title and thirty cents for each cancellation of notation of any lien on a certificate of title. The clerk of courts shall retain fifty cents of the seventy-five cents charged for each certificate of title; fifteen cents for each notation of lien; and fifteen cents for each cancellation of notation of lien. The remaining twenty-five cents charged for the certificate of title, the remaining fifteen cents charged for notation of any lien on a certificate of title and the remaining fifteen cents charged for any cancellation of notation of lien shall be paid to the registrar of motor vehicles by monthly returns which shall be forwarded to the registrar not later than the fifth day of the month next succeeding that in which the certificate is forwarded or that in which the registrar is notified of a lien or cancellation thereof. The registrar shall pay the same into the state treasury to be disbursed upon his order for the expense of the administration of this act. Any surplus over and above the cost of the administration of this act shall upon the order of the registrar be credited to the maintenance and repair fund of the highway department and is hereby appropriated to the use of said fund. The registrar, with the approval of the director of highways, is hereby authorized to transfer any sum not exceeding one hundred thousand dollars of the funds arising from the tax or fees on motor vehicles which shall have been paid into his hands and not finally distributed, to a fund for defraying the initial expenses of this act and the auditor of state and the treasurer of state are hereby authorized and directed to make such transfers as may be necessary to give effect to this section.

Provided, however, that the funds from which the transfer is made shall be reimbursed from the first receipts of the fees provided for in this act."

It is quite evident from the reading of Section 6290-15, quoted supra, that no provision is therein contained which specifically exempts county officials from the payment of the fees therein provided for the issuance, by a Clerk of Courts, of certificates of title, memorandum certificates or for the notation or cancellation of a lien on county owned motor vehicles. It is further quite apparent that, unless authority can be found elsewhere which specifically exempts county officials from the payment of such fees, such officials must be treated in the same category and must be charged and required to pay the same fees as any other person desiring the services of the Clerk of Courts in this respect.

However, I find from an examination of the statutes relating to the charging of fees by clerks of court, county recorders or other county officers for making and certifying copies of any record pertaining to such offices, that by the express provision of Section 2983 of the General Code, such officers are not permitted to collect any fees from the county. This section provides as follows:

"On the first business day of each month, and at the end of his term of office, each of such officers shall pay into the county treasury, to the credit of the general county fund, on the warrant of the county auditor, all fees, costs, penalties, percentages, allowances and perquisites of whatever kind collected by his office during the preceding month or part thereof for official services, *provided that none of such officers shall collect any fees from the county*; and he shall also at the end of each calendar year, make and file a sworn statement with the county commissioners of all fees, costs, penalties, percentages, allowances and perquisites of whatever kind which have been due in his office, and unpaid for more than one year prior to the date such statement is required to be made."(Italics mine.)

In Opinion No. 5136 referred to in your letter and found in the opinions of the Attorney General for the year 1936, my immediate predecessor in office had under consideration the provisions of Section 2983, supra, in considering a question received from the prosecuting attorney of Columbiana County as to whether or not the county recorder was authorized, under the provisions of Sections 2772 and 2778 of the General Code, to charge a fee for the certifying of copies of deeds and mortgages to be used by the prosecuting attorney as evidence in the trial of a criminal case. It was held in this opinion as follows:

"A county recorder may not require a prosecuting attorney or his assistant to pay the fees set forth in Section 2778, General Code, at the time of application for certified copies of deeds and mortgages recorded in the recorder's office, when such copies are to be used as evidence by the State in the trial of a criminal case in such county."

The reasoning upon which the foregoing conclusion was reached was based entirely on Section 2983, *supra*, which the then Attorney General held must be read in connection with the provisions of other sections of the General Code, including Sections 2772 and 2778. The provisions of Section 2983, *supra*, remain the same today as they were when under consideration in Opinion No. 5136.

In support of the contention that a county recorder may not exact from county officers the fees provided for in Section 2778 of the General Code for services rendered in certifying copies of records in his office, the then Attorney General cited an opinion of the Attorney General found in the Opinions of the Attorney General for 1921, Volume I, page 320. Reference to this opinion reveals that the syllabus thereof held as follows:

"Section 2983, General Code, as amended in 108 O. L., Part II, page 1217, impliedly repeals Section 5372-4, General Code, in so far as the latter section provides for the collection of fees by county officers from the county."

From an examination of Section 5372-4 of the General Code, as the same existed at the time of the rendition of the 1921 opinion, it is found that this section provided that the probate judge of a county, as well as some other officers, shall annually deliver to the county auditor a written statement showing the names of all administrators, etc., in control of an estate in his court, together with the aggregate value of all classes of property in their hands, and for this service, such judge shall receive for each certified estate the sum of ten cents, payable out of the county treasury. In holding that Section 2983, *supra*, repealed by implication, the fee provision contained in Section 5372-4 of the General Code, on page 320 of the opinion is was stated:

"The later section (2983) says that no fees of any kind shall be paid such officers (which includes Clerks of Court) from the county." (Matter in parenthesis mine.)

It was further stated in commenting on the provisions of Section 2983, *supra*, as follows:

“Considering the history of these sections, it is concluded that in this later negative statute, 2983, the legislature had in mind the special object of charging off, if it may be so expressed, the fees theretofore collected, under special fee statutes, as well as general fee statutes from the county, and to thus dispense with such unnecessary bookkeeping transactions which under the new policy would have no practical effect.”

Another opinion which was cited in Opinion No. 5136 and which I believe worthy of note in the determination of the question here considered was Opinion No. 817, rendered September 3, 1929 and found in the Opinions of the Attorney General for that year, Vol. II, at page 1259. In this opinion the then Attorney General, in holding that the Legislature had failed to provide for the collection of fees from the county treasurer for the recording, etc., of liens as provided for in Section 13435-5, General Code, stated at page 1261 of the opinion as follows:

“Another angle that gives rise to some difficulty in connection with your inquiry is as to the purpose of requiring a fee under such circumstances. Section 2983 of the General Code requires each county officer to pay into the county treasury all fees, costs and penalties collected by his office and further expressly provides that no such officer shall collect any fees from the county. The Legislature in the enactment of the provision under consideration certainly did not intend that any fees to be charged were to be retained by the recorder. The fact that the same are authorized to be collected would seem to be inconsistent with the provisions of said section in so far as it authorizes the payment out of the county treasury. In any event, if the statute under consideration can be said to provide for a fee, which the recorder is authorized to collect from the county treasurer, it follows that he would have to again return it to the county treasury in pursuance of the provisions of Section 2983.”

In Opinion No. 5136, I find that the then Attorney General, in determining that no good reason would be served if the county recorder were to collect from the prosecuting attorney fees for services rendered in certifying copies of deeds and mortgages requested by the prosecuting attorney to be used as evidence in the trial of a criminal case, stated:

“Section 2983, General Code, quoted, *supra*, states that the fees collected by county officers (including the county recorder) shall go into the county treasury to the credit of the general county fund. Hence, if a fee were to be collected by the county recorder for such a service as described by your communication, the effect would be that it would come from the general fund only to be returned therein, as pointed out in the two former opinions of the Attorney General, which certainly the legislature could not have intended by the language of Section 2983, General Code, in question.”

The contents of Opinion No. 5136 have been quoted somewhat in detail for the reason that it is believed that the same is directly applicable and dispositive of the question which you have presented. Although it is admitted that the provisions of Section 6290-15, *supra*, do not, by express language, specifically except county officials from the payment of fees therein provided, yet in the absence of express language to the effect that such officials shall be exempted from the payment of such fees, it is quite obvious to my mind that the Legislature did not intend or contemplate that such section was to be enacted as an exception to the provisions contained in Section 2983, *supra*.

There are some important principles as to statutory construction which I believe applicable to the question here considered to be found in the case of *State, ex rel. Jaster, Director of Highways vs. Court of Common Pleas of Jefferson County, et al.*, 132 O. S. 93. While this case is not a parallel case, yet the principles involved are parallel to the instant discussion. The question which confronted the Court in the *Jaster* case, *supra*, was whether or not the provisions of Section 1187, General Code, (providing that the Director of Highways is not sueable in any court outside of Franklin County in any action not specifically provided for) constituted an exception to Section 11271 of the General Code, (providing that actions against a public official for an act done by him by virtue of or under color of his office, or for neglect of his official duty, must be brought in the county where the cause of action or part thereof arose.) The Court in deciding this question held as is disclosed by the first branch of the syllabus as follows:

“Where a later specific statute is enacted on the same subject covered by an existing general statute, without express or implied intention to repeal the existing statute, such specific statute must be held to have been intended by the Legislature to be engrafted upon the general statute as an exception thereto.”

This, therefore, states the principle involved in the consideration of

this particular question. Was it intended by the Legislature that Section 6290-15, *supra*, was to be engrafted upon Section 2983 heretofore quoted, as an exception thereto? The Court in the Jaster case, *supra*, on page 96 of the opinion quoted from the holding of the Supreme Court in the case of *City of Cincinnati vs. Guckenberger*, 60 O. S. 353, wherein it was held as is disclosed by the first branch of the syllabus:

“A code of statutes relating to one subject, is presumed to be governed by one spirit and policy, and intended to be consistent and harmonious, and all of the several sections are to be considered in order to arrive at the meaning of any part, unless a contrary intent is clearly manifest.”

It is quite apparent that the Legislature in the enactment of Section 6290-15, *supra*, did not express a clear intent that the provisions thereof should operate as an exception to the provisions of Section 2983 of the General Code. It, therefore, becomes imperative in attempting to properly solve your particular question to construe Sections 2983 and 6290-15 together in an effort to make them consistent and harmonious and in so doing, the conclusion is inescapable that by virtue of Section 2983, *supra*, a clerk of courts may not exact from a county official the fees provided for in Section 6290-15 for services rendered in the issuance of a certificate of title, memorandum certificate, or for the notation or cancellation of a lien on a certificate of title covering a county owned motor vehicle. (Opinion No. 5146 rendered February 3, 1936, approved and followed.) In reaching this conclusion, I am not unmindful of the fact that by virtue of the provisions of Section 6290-15, part of the fees received by a clerk of courts pertaining to the issuance of certificates of title, etc., are forwarded to the Registrar of Motor Vehicles and by him paid into the State Treasury to be disbursed as therein provided. However, I do not believe that this provision in any manner affects the conclusion heretofore reached. The only reason that the same is here raised is due to the fact that the holding in Opinion No. 5136 was based somewhat on the theory that fees paid by county officials to a county recorder for certifying records in his office were paid out of the general fund by such official only to be returned therein by the county recorder.

It, therefore, might be said that, by reason of the fact that part of the fees received by a clerk of courts for services rendered in the issuance of certificates of title, etc. is paid into the State Treasury as provided in Section 6290-15, Opinion No. 5136 has no application to the question heretofore discussed. However, this, in my opinion, is immaterial in view of the express language contained in Section 2983, Gen-

eral Code, to the effect that no fees shall be collected by such officers from the county.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

2528.

APPROVAL—BONDS, GENEVA VILLAGE SCHOOL DISTRICT,
ASHTABULA COUNTY, OHIO, \$46,000.00, DATED FEBRU-
ARY 1, 1938.

COLUMBUS, OHIO, June 1, 1938.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of Geneva Village School District, Ashta-
bula County, Ohio, \$46,000.00 (Unlimited).

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of school improvement bonds dated February 1, 1938, bearing interest at the rate of $2\frac{1}{2}\%$ per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said school district.

Respectfully,

HERBERT S. DUFFY,

Attorney General.