

mission may request or the Tax Commission may prescribe. The budget commission is then directed to examine such budget and ascertain the total amount proposed to be raised in the county for the purposes of each subdivision and other taxing units therein.

Section 5625-24, General Code, provides as follows:

“The budget commission shall so adjust the estimated amounts required from the general property tax for each fund, as shown by such budgets, as to bring the tax levies required therefor within the limitations specified in this act for such levies, but no levy shall be reduced below a minimum fixed by law. It shall have authority to revise and adjust the estimate of balances and receipts from all sources for each fund and shall determine the total appropriations that may be made therefrom.”

It is apparent from the foregoing, that the budget commission may be compelled to make changes in the original estimates made and contained in the budgets submitted by county commissioners and the several other taxing subdivisions within the county, including rural school districts. In the event this becomes necessary, which is no doubt frequently the case, the members of the two taxing authorities in question, viz.: the county commissioners and the rural board of education may be, and frequently are, called before the budget commission for a conference to determine what changes shall be made in the estimates submitted by them. This necessarily involves consideration by the budget commission of the merits of the respective claims made by the county commissioners and other taxing authorities within the county. The result under those circumstances would be that the two boards would be placed in the position of adversaries and the members of said boards would be in the position of representing adverse interests.

I am therefore of the opinion that the offices of county commissioner and member of a board of education in a rural school district in the county are incompatible.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2976.

MUNICIPAL COURT OF PIQUA—OFFICIAL STENOGRAPHER—TRANSCRIPT FEES PAYABLE TO CLERK OF COURT.

SYLLABUS:

Moneys received by an official stenographer of the municipal court of Piqua, Ohio, for transcripts of his notes of the evidence and proceedings in the trial of cases in said court for use in the preparation of bills of exceptions in said court may not be retained by such official stenographer for his own use; but the same should be paid over to the clerk of said court who is required to account for the same in his official capacity as such clerk.

COLUMBUS, OHIO, December 6, 1928.

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

GENTLEMEN:—This is to acknowledge receipt of your recent communication which reads as follows:

“May fees collected by the official stenographer of the Piqua municipal court for preparing bills of exceptions be retained by such stenographer?”

Section 1579-594, G. C., provides for the appointment of one or more official stenographers for said court and that a charge shall be made for making transcripts of evidence which fee shall be accounted for by the clerk.”

Section 1579-594, General Code, referred to in your communication is a part of an act passed April 29, 1921 (109 O. L. 555), providing for the establishment of a municipal court for the city of Piqua in Miami County, Ohio, the provisions of which act have been carried into the General Code as Sections 1579-560 to 1579-600, inclusive, General Code. Said act prescribes the jurisdiction of the court thereby established and provides for the election and appointment of the officers thereof, one of whom is a clerk, to be elected in the manner therein provided. Said section 1579-594, General Code, so far as pertinent to the consideration of the question presented in your communication provides as follows:

“* * * The council of the city of Piqua, by ordinance, shall provide for one or more official stenographers and fix their compensation, and provide for the payment of the same monthly out of the city treasury and the same shall be appointed by the judge of the municipal court and serve at his pleasure. The court shall regulate the charge for transcripts of testimony and the costs thereof shall be paid to the clerk and by him accounted for.”

Section 1579-582, General Code, provides that “proceedings in error may be taken to the common pleas court of Miami County from a final judgment or order of the municipal court in the same manner and under the same conditions as provided by law for proceedings in error from the common pleas court to the court of appeals.

Inasmuch as this act providing for the municipal court of Piqua, does not make any special provision for the preparation and filing of bills of exception therein, the provisions of Section 1579-582, General Code, above quoted, make applicable Section 11564, General Code, relating to the preparation and filing of bills of exceptions in the common pleas court in connection with error proceedings in the court of appeals. Said Section 11564, General Code, is as follows:

“When the decision is not entered on the record, or the grounds of the objection do not sufficiently appear in the entry, or the exception is to the decision of the court on a motion to direct non-suit, or to arrest the evidence from the jury, or for a new trial for misdirection to the jury, or because the verdict, or if a jury is waived, the finding of the court is against the law and the evidence, or on the admission or rejection of evidence, the party excepting must reduce his exceptions to writing, and file them in the cause, not later than forty days after the overruling of the motion for a new trial, or the decision of the court, when the motion for a new trial is not filed.”

Touching the question here presented, said Section 11564, General Code, requires that with respect to a proceeding in error in the common pleas court of Miami County, to a judgment of the municipal court of Piqua, Ohio, on the ground that the verdict of the jury or the judgment of the court is against the weight of the evidence, or where the error assigned is that the court erred in its charge to the jury, or is predicated on some decision or ruling of the court in the trial of the case, not shown by journal entry, the party complaining or his counsel must prepare and file in said municipal court a bill of exceptions; and when the error claimed is that such verdict or judgment is against the weight of the evidence such bill of exceptions is required to contain all the evidence in the case.

It will be noted that the duty imposed by Section 11564, General Code, with respect to the matter of preparing and filing the bill of exceptions is one imposed upon the party; there is nothing in said section which imposes such duty upon the official stenographer of the court, although as a matter of practice it is quite usual for the official stenographer in the common pleas court to prepare such bill of exceptions on the request of a party or his counsel, and to make a charge therefor at the folio rate prescribed in Section 1552, General Code.

With respect to the question here presented, it is quite obvious that a party to a case, in the municipal court of Piqua, desiring to prepare and file a bill of exceptions therein with respect to a proceeding in error filed or to be filed in the common pleas court of Miami County, Ohio, may require a transcript of the official stenographer's notes of the evidence and proceedings in the trial of said case. In such case the party desiring such transcript for the purpose of the bill of exceptions is required to pay to the official stenographer of the municipal court of Piqua, his proper charges for the transcript so furnished; and, as provided by Section 1579-594, General Code, above quoted, the moneys received by the official stenographer of this court for such transcript are required to be paid over to the clerk of the court who, in turn, is required to account for the same in his official capacity.

In the preparation of a bill of exceptions there may be a small amount of stenographic and manual work other than that involved in transcribing the notes of the evidence and proceedings had on the trial of the case. Instead of performing such services himself the party or his counsel may, of course, have the official stenographer perform the same and pay therefor such compensation as may be agreed upon. Such compensation so paid to the official stenographer may be retained by such person; but clearly under the provisions of Section 1579-594, General Code, the official stenographer of the municipal court of Piqua does not have the right to retain for his own use moneys paid by a party in a case in said court or by his counsel for a transcript of the notes of said stenographer of the evidence and proceedings in the trial of a case, whether such a transcript is desired for the purpose of a bill of exceptions or otherwise.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2977.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN
LORAIN AND PICKAWAY COUNTIES.

COLUMBUS, OHIO, December 6, 1928.

HON. HARRY J. KIRK, *Director of Highways, Columbus, Ohio.*