

2196.

APPROVAL, BONDS OF VILLAGE OF NEW KNOXVILLE, AUGLAIZE COUNTY, \$12,000.00.

COLUMBUS, OHIO, February 2, 1925.

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

2197.

PRCBATE JUDGE— AMOUNT ALLOWED FOR DEPUTY HIRE UNDER SECTION 2980 G. C.

SYLLABUS:

The fines collected by a probate judge should not be included with his fees, costs, percentages, penalties, allowances and other perquisites, in determining the minimum amount of his deputy hire under section 2980 G. C.

COLUMBUS, OHIO, February 3, 1925.

HON. OTTO J. BOESEL, *Prosecuting Attorney, Wapakoneta, Ohio.*

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

“Section 2980 of the General Code of Ohio provides that the County Commissioners shall fix the aggregate sum to be expended for compensation for deputies, assistant deputies, clerks and other employees of the various county offices, which sum shall be reasonable and proper, but in no case shall the allowance be less than forty per cent on the first \$2,000.00, or fractional part thereof, sixty per cent on the next \$6,000.00 or the fractional part thereof, and eighty-five per cent on all over \$10,000.00 of the fees, costs, percentages, penalties, allowances, and other perquisites collected for the use of the County in any office for official service during the year ending September 30th, next preceding the time for fixing such aggregate sum.

“In determining the amount on which the above minimum is based, we would be pleased to have your opinion as to whether or not fines imposed and collected by the Probate Court of this County should be included under the items of fees, costs, percentages, penalties, allowances and other perquisites collected for use of the county, as set forth in said section.

“In other words, the Probate Office in this County has turned into the treasury of the County during the year ending Sept. 30, 1924, the amount of \$5,097.76. This aggregate amount, however, includes a number of items representing fines imposed and collected by said office. Should these fines be included in this amount for the purpose of determining the aggregate minimum provided for under section 2980 of the General Code?”

Sec. 2977, General Code, reads:

"All the fees, costs, percentages, penalties, allowances and other perquisites collected or received by law as compensation for services by a * * * probate judge * * * shall be so received and collected for the sole use of the treasury of the county * * *, and shall be held as public moneys belonging to such county * * *."

Section 2980, General Code, as amended 108 O. L. pt. 2, p. 1216 (compensation of employes) reads:

"* * * which sum shall be reasonable and proper, but in no case shall the allowance be less than 40%, on the first two thousand dollars or fractional part thereof, * * *, and 85% on all over ten thousand dollars, of the fees, costs, percentages, penalties, allowances, and other perquisites collected for the use of the county in any such office for official services during the year ending Sept. 30, next preceding the time of fixing such aggregate sum, * * *. The allowances * * * shall be certified to by the county commissioners and filed with the county auditor, who shall transfer said amounts thus fixed from the general county fund to a separate salary fund for each of said officers."

It will be noted, under section 2977, G. C., that the "fees, costs, percentages, penalties, allowances and other perquisites" therein named are those "that are received by law as compensation for services by the probate judge for the use of the county * * *," and, under section 2980 G. C., reference is made to those that are "collected for the use of the county * * * for official services."

It is apparent from the provisions of the foregoing sections that the term "fines" is not included in the classification of collections herein specified, and it is evident that "fines" are not imposed and collected for "official services."

Fines collected in the probate court were payable into the county treasury, to the credit of the general fund; but the fees, etc., mentioned in section 2980 G. C. were formerly payable into the probate judges fee fund and said fee fund was then used as a basis for calculating the amount of deputy hire which was limited by a prescribed maximum.

Under section 2980 G. C. as amended 108 O. L. pt. 2, p. 1216, said fees, etc., are payable into the county treasury to the credit of the general county fund, and a minimum amount for deputy hire is prescribed, based upon a percentage of the fees, etc., named in said section.

The word "fines" is not used in any of the sections pertaining to the determining of the amount of deputy hire. While, under the provisions of section 2983 G. C., "the fees, costs, penalties, percentages, allowances and perquisites of whatever kind" are payable into the county treasury "on the first business day of each month" a separate and distinct provision is made by section 12578 G. C. regarding fines which under said section are to be paid "into the treasury of the county * * * within twenty days after the receipt thereof."

In the foregoing sections of the General Code, fines are not included in the classification of the various fees and other perquisites that are used as a basis for calculating deputy hire, and said fines are expressly precluded from said classification aforesaid by the provisions in section 2977 and 2980, General Code, which limit said "fees, costs, percentages, penalties, allowances, and other perquisites" to those that are "received as compensation for services by the probate judge" and to those that are "collected for the use of the county, for official services."

It is, therefore, the opinion of this department that fines collected by a probate judge should not be included with his fees, costs, percentages, penalties, allowances

and other perquisites, in determining the minimum amount of his deputy hire under section 2980 G. C.

Respectfully,
C. C. CRABBE,
Attorney-General.

2198.

OPINION TO SUPPLEMENT OPINION NO. 2129. ABSTRACT, STATUS OF TITLE, FOUR HUNDRED AND SEVENTY-SIX (476) ACRES OF LAND, SITUATE IN BENTON TOWNSHIP, PIKE COUNTY, OHIO.

COLUMBUS, OHIO, February 4, 1925.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Ohio State University, Columbus, Ohio.*

DEAR SIR:—The purpose of this opinion is to supplement former opinion of this department, No. 2129, under date of January 7, 1925.

In the former opinion, the encumbrance estimate submitted was No. 5643 and covered five hundred and forty (540) acres of land, at an estimated cost of \$2,160.00. The encumbrance estimate now submitted bears No. 5647 and covers four hundred and seventy-six (476) acres of land, the same as described in the warranty deed, at an estimated cost of \$1,904.00. Attention is directed to the former encumbrance estimate No. 5643, dated December 22, 1924, which should be taken up and voided before the present encumbrance can be used.

The warranty deed as now submitted has been corrected in the encumbrance clause and now conveys the premises, free and clear from all encumbrances whatsoever. The deed has also been properly executed in accordance with the suggestion of this department in our former opinion.

Otherwise, our former opinion stands as originally submitted, and your attention is again particularly directed to the last four paragraphs of the former opinion.

Encumbrance estimate No. 5647, which appears to be in proper form, the warranty deed now executed and the abstract submitted by you are herewith returned.

Respectfully,
C. C. CRABBE,
Attorney-General.

2199.

ABSTRACT, STATUS OF TITLE, LOT NUMBER THIRTY-EIGHT (38) OF HAMILTON'S SECOND GARDEN ADDITION TO CITY OF COLUMBUS, OHIO.

COLUMBUS, OHIO, February 5, 1925.

HON. CHARLES V. TRUAX, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—An examination of an abstract of title submitted by your office to this department discloses the following:

The abstract under consideration was prepared by Adolph Haak & Company,