

3655.

APPROVAL, BONDS OF LOWELL VILLAGE SCHOOL DISTRICT,
WASHINGTON COUNTY, OHIO—\$4,042.41.

COLUMBUS, OHIO, December 19, 1934.

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

3656.

APPROVAL, BONDS OF PIKE TOWNSHIP RURAL SCHOOL DISTRICT,
MADISON COUNTY, OHIO—\$2,055.27.

COLUMBUS, OHIO, December 19, 1934.

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

3657.

APPROVAL, BONDS OF AUGLAIZE RURAL SCHOOL DISTRICT, ALLEN
COUNTY, OHIO—\$721.64.

COLUMBUS, OHIO, December 19, 1934.

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

3658.

ELECTION—RETURN OF MONEYS DEPOSITED WITH BOARD OF
ELECTIONS FOR RECOUNT OF VOTES CAST FOR PROSECUTING
ATTORNEY.

SYLLABUS:

Where a candidate for office applies for a recount of the votes cast for said office in certain precincts and his opponent thereafter makes application for a recount in other precincts, and there is no change in the result of the election as a result of the recount of the precinct requested by the latter candidate, he is not entitled to the return of his entire deposit but should be charged with the cost of such recount in those precincts designated by him in which such recount did not establish errors sufficient to change the result in such precincts by at least two per cent of the total votes cast therein for such office, which cost should not be less than five dollars nor more than ten dollars per precinct, although

the recount of the precincts requested by the other candidate established sufficient errors to change the result of the election favorable to him.

COLUMBUS, OHIO, December 19, 1934.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

"The Board of Elections of Mahoning County has asked me to submit to you for your official consideration, a question as to the return of moneys deposited with said Board for a recount of votes cast for the office of prosecuting attorney in said county.

The circumstances, they state, are as follows:

'Jesse H. Leighninger who is the present incumbent in the office of Prosecutor in Mahoning County, was defeated at the General Election held on November 6th, 1934, by William A. Ambrose, by a total of thirty-one (31) votes according to the official returns made by the various precinct boards. On November 19th, 1934, at 11:45 o'clock A. M., Mr. Leighninger filed an application with the Mahoning County Board of Elections, asking for a recount in two hundred seventeen (217) precincts out of a total of two hundred sixty (260), depositing at the same time the required amount of money in the sum of Two Thousand One hundred Seventy Dollars (\$2,170.00).

"On November 19, 1934, at 4:59 o'clock P. M., Mr. Ambrose filed a request for a recount of the votes cast for the office of Prosecutor, which read as follows:

"In accordance with the provisions of Section 4785-162, of the General Code of the State of Ohio, enclosed herewith you will find certified check in the sum of Two Thousand Five Hundred and Eighty Dollars (\$2,580.00) to cover the cost of a recount of the votes cast in the General Election of November 6th, 1934, for the office of Prosecutor in Mahoning County.

This application for recount of said votes is to embrace all of the precincts in Mahoning County, *EXCEPT*—

Precinct K—Third Ward, Youngstown, Ohio; Precinct V—Third Ward, Youngstown, Ohio, and all other precincts in Mahoning County *actually recounted* under the application for a recount by Jesse H. Leighninger, the Republican candidate for this office, or Electors acting for him.

Respectfully yours,
William A. Ambrose,
Prosecutor Elect,
Mahoning County, Ohio.

P. S. In connection with the above, we post herewith TWO THOUSAND FIVE HUNDRED AND EIGHTY DOLLARS (\$2,580.00) in *U. S. Currency*, in accordance with Section 4785-162 of the General Code of Ohio."

"At the completion of the recount requested by Mr. Leighninger of the two hundred and seventeen precincts, the result had changed and Mr. Leighninger was leading by eighty-four votes. Mr. Ambrose then

requested that the recount commence on the balance of the uncounted precincts, which left a total of forty-one precincts to be counted on the said request of Mr. Ambrose. At the completion of the forty-one precincts, Mr. Leighninger was still the winner by a total of sixty-two votes.

"The question now arises as to the return of the money which was deposited by Mr. Ambrose, as to whether his ENTIRE deposit should be returned, or whether he should be charged for those precincts in the total of forty-one in which no error was found sufficient to change the result by two per cent of the vote cast in such precincts."

It appears from the above that Mr. Ambrose made application for a recount of the votes cast for the office of prosecuting attorney in all precincts in Mahoning County except two precincts in Youngstown and all other precincts actually recounted by virtue of the application which had theretofore been filed by Mr. Leighninger, that a recount was first made in all the precincts specified in the application of Mr. Leighninger, and that thereupon at the request of Mr. Ambrose a recount was had in the precincts included in his application. It further appears that while the recount of the precincts requested by Mr. Leighninger resulted in a change in the result of the election favorable to him, there was no change in the result of the election as a result of the recount of the precincts requested by Mr. Ambrose.

Section 4785-162, General Code, reads as follows:

"Any candidate voted for at a primary election, or any group of five or more qualified electors voting at such election, by making an application in writing to the board of elections, shall be entitled to have the votes for any such candidate, or other candidates for the same office, or any such issue, recounted in any or all precincts, upon the following terms and conditions. Such application must be made not later than the fifth day after the certificate of the official count has been made, and by depositing with the application ten (\$10.00) dollars per precinct, or a bond to be approved by the board, to pay the actual cost of such recount, but in no case less than five (\$5.00) dollars, and not to exceed ten (\$10.00) dollars per precinct, for each precinct in which the recount is desired. If the petitioner or petitioners succeed in establishing error sufficient to change the results in any precinct by at least two per cent (2%) of the total vote cast for each office in such precinct, or by two per cent (2%) of the total vote cast for and against such issue in such precinct, then the deposit for such precinct shall be refunded, otherwise, the actual cost of such recount shall be paid into the general fund of the county in which such recount is had, provided, however, that the minimum charge of such recount shall not be less than five dollars (\$5.00) and the maximum more than ten dollars (\$10.00) per precinct. If sufficient error is established to change the result of the election, regardless of the error found in any precinct, then the deposit made for all precincts shall be refunded."

The provision for refunds in this section is apparently based upon the principle that a party appealing from the determination of a board should not

be compelled to pay the costs thereof in the event his appeal is successful. The statute provides for a refund only if the petitioner succeeds in establishing error sufficient to change the result of the election, or the result in any precinct by at least two per cent of the total vote cast for such office in such precinct. It follows, therefore, that such change must result by reason of the recount of those precincts requested by such petitioner. The fact that the recount of the precincts requested by the opponent of such petitioner established an error changing the result of the election unfavorably to said petitioner would not, in my opinion, entitle him to a refund of the entire deposit made by him.

I am of the view therefore that the unsuccessful candidate is not entitled to a refund of the entire amount deposited by him, but that he should be charged with the cost of the recount of those precincts requested by him in which he did not establish errors sufficient to change the result in such precincts by at least two per cent of the total vote cast therein for the office of the prosecuting attorney, which cost should not be less than five dollars nor more than ten dollars per precinct.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3659.

APPROVAL—BONDS OF LARUE VILLAGE SCHOOL DISTRICT,
MARION COUNTY, OHIO, \$3,285.82.

COLUMBUS, OHIO, December 19, 1934.

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

3660.

APPROVAL—BONDS OF GOSHEN TOWNSHIP RURAL SCHOOL DISTRICT,
TUSCARAWAS COUNTY, OHIO, \$4,526.74.

COLUMBUS, OHIO, December 19, 1934.

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

3661.

APPROVAL—BONDS OF CLAY TOWNSHIP RURAL SCHOOL DISTRICT,
MONTGOMERY COUNTY, OHIO, \$3,453.95.

COLUMBUS, OHIO, December 19, 1934.

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