

which, when collected, shall be paid to the public treasury from which the jurors were paid."

Prior to the enactment of the Code of Criminal Procedure, Section 12375, General Code, read substantially the same as Section 13451-18, General Code, but provided that "a jury fee of six dollars shall be included in the costs", instead of as it now reads in Section 13451-18 that "a jury fee of \$----- should be included in the costs".

Two views present themselves as to the reason for the Legislature's omitting the amount, or rather in setting forth the amount as \$-----, in the provisions of Section 13451-18. One is that the Legislature set forth the amount in blank intentionally, because it was intended that the actual amount of jury fees expended should be taxed, and, this amount varying in each case, it could therefore not be definitely fixed. On the other hand, it may be said that it was omitted unintentionally through mistake or oversight. The former view does not seem tenable, for it may be assumed that if the Legislature intended that the actual amount of jury fees should be taxed it would have used more apt language. It would not have been necessary to fix a definite amount in the statute; it would have been sufficient merely to state "jury fees shall be included in the costs". The provision "a jury fee of \$-----" indicates that the Legislature had in mind a definite amount and it appears to me that the omission of the amount was made from oversight or mistake.

Since the Legislature failed to fix the amount of jury fees that may be taxed as costs in a criminal case, the courts cannot substitute such amount and therefore no authority exists to include jury fees as costs to be included in a judgment rendered against a defendant in a criminal case.

In the case of *Haserodt vs. State, ex rel.* 6 Ohio App. 354, the issue was raised as to what fees a chief of police was entitled to receive under a statute which provided that his fees should be the same as provided for constables and sheriffs in certain cases. It appeared that under such circumstances a constable received one fee, while the sheriff received another. In view of the two different provisions relative to the fees of the constable and the sheriff, the court held that the Legislature had failed to make any provision for fees for the chief of police in such cases because of the indefiniteness of the language used. It is believed that this case by analogy applies to the situation before me since the Legislature provided that jury fees may be taxed as costs, yet failed to fix the amount of fees to be taxed as costs.

In view of the discussion herein, I am of the opinion that the Legislature having failed to fix in Section 13451-18, General Code, the amount of jury fees which shall be included as costs, therefore, no authority exists to tax jury fees as costs and include them in a judgment against the defendant in a criminal case.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1949.

APPROVAL, ABSTRACT OF TITLE TO PREMISES OF BENJAMIN C. VAIL IN COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, June 6, 1930.

The State Office Building Commission, Columbus, Ohio.

GENTLEMEN:—There has been submitted for my examination and approval an

abstract of title of the following described premises situated in the City of Columbus, Franklin County, Ohio, and further described as being the south half of inlot 121 in the City of Columbus, as the same is numbered and delineated on the recorded plat thereof, of record in Deed Book F, page 332, Recorder's Office, Franklin County, Ohio.

This property stands of record in the name of Benjamin C. Vail, and my examination of the abstract of title submitted shows that said Benjamin C. Vail has a good and indefeasible fee simple title to the above described property, free and clear of all encumbrances whatsoever, except the following liens thereon, which are here noted as exceptions:

1. On September 1, 1928, said Benjamin C. Vail executed and delivered to The Buckeye State Building and Loan Company a mortgage on the property here in question, in the sum of \$10,000, to secure the payment of a promissory note of even date therewith in said sum, which note is due and payable on and before September 3, 1931, with interest at the rate of six per cent per annum, or more as therein provided, payable semi-annually. This mortgage, to the extent of the amount of money remaining unpaid upon the promissory note, is a lien on said property.

2. The taxes on said property for the last half of the year 1929, amounting to \$171.46, and which are due and payable in June, 1930, are unpaid and a lien on said property. Likewise the taxes for the year 1930, the amount of which is not yet determined, are a lien on said property.

3. Special assessments on the said property are noted as follows: For the Front Street street improvement, which was on the eight year assessment plan, seven installments have been paid, leaving a balance of \$48.24, including interest at $5\frac{1}{2}$ per cent. The first half of said eighth installment, amounting to \$24.12, is due in December, 1930.

There is an assessment for lighting system on Front Street. This assessment is on a five year plan. No installments on this assessment have been paid and the total amount of said assessment is the sum of \$162.74, including interest at the rate of $4\frac{1}{2}$ per cent. The first half of the first installment on this assessment, amounting to \$16.27, is due in June, 1930.

I call your attention to the fact that no warranty deed executed by said Benjamin C. Vail, for the purpose of conveying the property in question to the State of Ohio, has been submitted for my approval. Before the transaction for the purchase of this property is closed, such deed should be prepared and submitted to this office for approval.

Under the provisions of Section 2288-2, General Code, before any officer, board or commission of the state is authorized to enter into any contract, agreement or obligation involving the expenditure of money or to pass any resolution or order for the expenditure of money, the Director of Finance shall first certify that there is a balance in the appropriation pursuant to which said obligation is required to be paid, and not otherwise obligated to pay precedent obligations. An encumbrance estimate relating to the purchase price of this property should accordingly be secured and submitted to me for approval before the transaction relating to the purchase of this property is closed by you.

Respectfully,
GILBERT BETTMAN,
Attorney General.