

1694.

APPROVAL, NINE LEASES TO CANAL AND OTHER STATE LANDS IN OHIO.

COLUMBUS, OHIO, December 10, 1920.

HON. JOHN I. MILLER, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—I have your letter of December 6, 1920, in which you enclose the following leases, in triplicate, for my approval:

	<i>Valuation.</i>
To J. E. Weinrauch, Troy, Ohio, portion of the M. & E. canal property, at Troy, Ohio-----	\$1,666 66
R. Wilke, Columbus, Ohio, part of lot No. 57, east of Sayre's boat-house at Buckeye Lake, for business purposes	1,666 66
Ora Woolard, dock landing at Buckeye Lake-----	633 33
R. Astor, Dayton, Ohio, a small island at Lake St. Marys, known as Eagle Island-----	400 00
D. W. Bennett, Bucyrus, Ohio, cottage site, on west bank of Buckeye Lake-----	400 00
The Ohio Fuel Supply Company, Columbus, Ohio, right-of-way for four-inch gas main on the Ohio canal in Muskingum county-----	250 00
Bernard Elliott, Pataskala, Ohio, cottage site at Buckeye Lake -----	200 00
John W. Northrup, Columbus, Ohio, cottage site at Buckeye Lake-----	200 00
Izetta L. Wolf, Columbus, Ohio, cottage site at Buckeye Lake -----	200 00

I have carefully examined said leases, find them correct in form and legal, and am therefore returning the same with my approval endorsed thereon.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1695.

CONSTABLE—CANNOT LEGALLY CHARGE FOR COPIES OF WRITS WHICH HE IS REQUIRED TO SERVE—SEE SECTION 3347 G. C.

Under the provisions of section 3347 G. C. a constable cannot legally charge for copies of writs which he is required to serve.

COLUMBUS, OHIO, December 10, 1920.

HON. CALVIN D. SPITLER, *Prosecuting Attorney, Tiffin, Ohio*

DEAR SIR:—In your communication of recent date you present the following questions:

“In looking over the provisions of sections 1746 and 1746-1 Ohio Laws, Vol. 108, Part II, p. 1204, I note there is no provision for the justice of the

peace charging for record either in criminal or civil proceedings. Is it your understanding that the provisions are now repealed whereby justices of the peace heretofore charged fifteen cents per hundred words for the record transcribed on their docket and the transcripts issued therefrom?

I would also like to know whether it is your understanding that the constable can no longer charge for copies of writs which he is required to serve?"

In reply to the first inquiry, which relates to the fees of a justice of the peace, you are referred to an opinion issued by this department May 28, 1920, being numbered 1294, which it is believed substantially answers said first inquiry. Copy of said opinion is enclosed herewith.

In reply to your second inquiry, relating to the fees of a constable, you are referred to section 3347 of the General Code, 108 O. L., Part II, p. 1203, which provides:

"For services actually rendered and expenses incurred, regularly elected and qualified constables shall be entitled to receive the following fees and expenses, to be taxed as costs and collected from the judgment debtor, except as otherwise provided by law: Serving and making return of each of the following orders or writs, for each defendant named therein including copies to complete service, if required by law, fifty cents; viz., search warrant, warrant to arrest, order to commit to jail, order on jailer for prisoner or prisoners, order of attachment, order of ejection, order of restitution, and writ of replevin; serving and making return of each of the following notices and writs, for each person named therein, including copies to complete service, if required by law, twenty-five cents: viz., summons, subpoena, venire and notice to garnishee; serving and making return of execution against property or person, fifty cents, and four per cent. of all money thus collected; serving and making return of any other writ, order or notice, required by law, not mentioned above, for each person named therein including copies to complete service, if required by law, fifty cents; mileage for the distance actually and necessarily traveled in serving and returning any of the preceding writs, orders and notices, first mile twenty-five cents and each additional mile, five cents; attending criminal case during trial or hearing and including having charge of prisoner or prisoners, each case, one dollar, but when so acting, shall not be entitled to a witness fee if called upon to testify; attending civil court during jury trial, each case, one dollar; actual amount paid solely for the transportation, meals and lodging of prisoners, and the moving and storage of goods and the care of animals taken on any legal process, the same to be specifically itemized on the back of the writs and sworn to; summoning and swearing appraisers, each case, one dollar; advertising property for sale, by posting, taken on any legal process, fifty cents; taking and making return of any bond required by law, fifty cents."

This section was amended as above quoted in House Bill No. 294, which was an act revising in general the fee sections of the statutes. Said section as above quoted is the last word of the legislature relative to the fees of constables. After having carefully considered the provisions therein it would seem to be clear that it was the intent of the legislature that the fees therein provided for a constable in serving writs are to include copies which may be necessary for him to serve.

You are therefore advised that it is the opinion of this department that a constable cannot charge for copies of writs which he is required to serve.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1696.

BOARD OF EDUCATION—WIFE OF MEMBER OF BOARD APPEARS AS PARTY TO CONTRACT WITH SUCH BOARD OF EDUCATION—CONTRACT NULL AND VOID—SEE SECTION 4757 G. C.—WHERE SCHOOL SUSPENDED, TRANSPORTATION PROVIDED BY BOARD OF EDUCATION MUST BE TO PUBLIC SCHOOL.

1. *Where the wife of a member of a board of education appears as a party to a contract with such board of education, such contract is in violation of section 4757 G. C., and is null and void.*

2. *Where a school has been suspended by a board of education under the provisions of section 7730 G. C., the transportation provided by the board of education must be to a public school and not to a school privately supported.*

COLUMBUS, OHIO, December 10, 1920.

HON. LEWIS F. STOUT, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following statement of facts furnished to you by a member of a township board of education in your county:

"I am at present a member of the school board of Moulton township, Auglaize county, Ohio. I have three children of school age attending school, and the proper school for them to attend is the Otterbein school in said township. At the beginning of the 1920 term the school board closed said school by reason of the fact that there were not enough pupils to justify it remaining open and at that time the school board of which I am a member contracted with my wife, agreeing to give her \$25.00 per month to transport her and my children to a school in Wapakoneta without designating the particular school, Wapakoneta being the nearest school point. With the consent of the district school superintendent I enrolled my children in St. Joseph's parochial school at Wapakoneta and my wife has been transporting them to Wapakoneta since.

I wish to ascertain first whether the contract with my wife is a good contract, and, secondly, whether the board has the power to authorize the payment to anyone or transporting children to a parochial school under the conditions above mentioned."

Bearing upon the first question, whether the contract of the board of education with the wife of a member of such board of education is a legal contract, your attention is invited to section 4757 G. C., which reads in part as follows:

"No member of the board of education shall have, directly or indirectly,