

2052.

APPROVAL, BONDS OF VILLAGE OF MARBLE CLIFF, FRANKLIN COUNTY, \$35,900.00.

COLUMBUS, OHIO, December 9, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2053.

DEPUTY REGISTRAR APPOINTED UNDER PROVISIONS OF SECTION 6291-1, GENERAL CODE, MAY NOT CHARGE FEES OR COMPENSATION.

SYLLABUS:

A deputy registrar appointed under the provisions of Section 6291-1 may not legally charge fees or compensation for his services in connection with his duties under the provisions of Section 6291-1.

COLUMBUS, OHIO, December 10, 1924.

HON. OREL J. MYERS, *Prosecuting Attorney, Greenville, Ohio.*

Dear Sir:—

In your recent communication you request my opinion on an inquiry which is in substance as follows:

Whether or not under provision of Section 6291-1 of the General Code of Ohio, twenty-five cents per license can be charged by those distributing automobile tags.

Inasmuch as you refer to Section 6291-1, as enacted in 110 O. L., 244, of course, your question must have reference to automobile tags distributed by deputy registrars as provided for in said section. Said section provides:

“The secretary of state shall designate one or more persons in each county to act as deputy registrars, who shall accept applications for the annual license tax, and assign distinctive numbers in the same manner as the secretary of state. Such registrars shall be located at the county seat and at such other cities or villages in the county as the secretary of state sees fit, and shall serve without compensation.

The secretary of state shall assign to each deputy registrar a series of numbers sufficient to supply the demand at all times in such community, and shall keep a record in his office of the numbers within the series so assigned. Each deputy registrar shall be required to give bond, the form and amount of which shall be prescribed by the secretary of state.

The deputy registrars shall keep a file of each application and register such

motor vehicle with the name and address of the owner thereof. The secretary of state shall keep a similar file of all persons who have applied directly to him."

The deputy registrar in each locality, under the provisions of this section, represents the Secretary of State and performs the same duties and service in reference to the registration of automobiles.

In a former opinion rendered to Hon. Thad H. Brown, Secretary of State, found in opinions of Attorney General for the year 1923, page 688, it was held that such deputy registrar is an appointive state officer within the provisions of Section 6 of the General Code.

In this connection it will be observed that the duties of the Secretary of State are set forth in Section 6290 et seq. of the General Code. Without quoting the pertinent provisions, it may be stated that under these sections every owner of a motor vehicle which shall be operated upon the public roads or highways in this state shall before the first of January each year (except in certain cases) make an application upon blanks furnished by the Secretary of State for the registration of such motor vehicle; whereupon when the applicant has paid the tax provided for in Section 6292, the Secretary is required to assign a distinctive number, issue a certificate of registration and issue two number plates, etc. Nowhere in these statutes is there any express or implied authority for the Secretary of State to charge for this service any fees or compensation, excepting the tax heretofore referred to, which he is required to collect and pay into the state treasury.

It is evident that the provision for deputy registrars has a two-fold purpose: First, to accommodate the citizens of the various counties in order that they may promptly receive tags which the law requires them to obtain; and, second, to relieve the congestion of the Secretary of State's office by the distribution of this volume of work.

In connection with your inquiry it must be kept in mind that it has been an established policy of this state for a long period of time that fees and compensation are not allowed by implication, and that there is no such thing as constructive fees. *State vs. Lewis*, 22 O. C. C. 619, affirmed, 57 O. S., 189.

As was stated in the case of *Halpin vs. Cincinnati*, 3 Dec. Reprint, 58.

"An office bears no fees except such as are prescribed by statute or ordinance, if none, he can get none, though the services are at the request of a superior."

As another evidence of the policy above referred to in this respect, attention is called to Section 12916 of the General Code, which provides:

"Whoever, being an officer under the constitution or laws of this state, knowingly asks, demands or receives a reward, other than is allowed by law, to execute his official duty, or knowingly charges, asks, demands or receives greater fees or costs than are allowed by law for such official duty, or engages in, or permits another in his employ to engage in a business, which by reason of his office, he is prohibited from doing, shall be fined not more than two hundred dollars or imprisoned not more than twenty days, or both, and forfeit his office."

From the foregoing it is evident that in order that such fees or compensation may be collected by the deputy registrars, express provision in the statute must be found authorizing the charging or collection of such compensation or fees. In

searching the statutes for such provision, not only have we been unable to find any such express provision, but on the contrary, Section 6291-1 of the General Code expressly provides that such deputy registrar "shall serve without compensation."

In view of the foregoing, the conclusion is irresistible that a deputy registrar appointed under the provisions of Section 6291-1 may not legally charge fees or compensation for his services in connection with his duties under the provisions of Section 6291-1.

Respectfully,

C. C. CRABBE,
Attorney General

2054.

APPROVAL, ABSTRACT OF TITLE TO LOT NO. 14 OF HAMILTON'S SECOND GARDEN ADDITION TO THE CITY OF COLUMBUS, OHIO.

COLUMBUS, OHIO, December 10, 1924.

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, Abstracters, under date of August 10, 1905; a continuation thereto by J. B. Kahle, Attorney, August 14, 1914; a continuation by J. B. Kahle, Attorney, February 3, 1915; a continuation by William K. Williams, Attorney, September 13, 1919; and a further and last continuation by E. M. Baldrige under date of December 1, 1924.

Said abstract and the continuations thereto pertain to the following premises:

Being Lot No. 14 of Hamilton's Second Garden Addition to the City of Columbus, Ohio, as the same is numbered and delineated upon the recorded plat thereof, recorded in Plat Book No. 7, page 186, Recorder's Office, Franklin County, Ohio;

Saving and excepting therefrom six feet off the rear end thereof, reserved for the purpose of an alley.

Upon examination of said abstract, I am of the opinion same shows a good and merchantable title to said premises in William C. Enz, subject to the following:

The release of the mortgage shown in Section 8 of the first part of the abstract is in defective form, but as the note secured by the mortgage has been long past due, no action could be maintained upon same.

The release shown at Section 14 is also defective, but shows that the notes secured by the mortgage were undoubtedly paid.

Attention is directed to the restrictions in the conveyance, shown at Section 1 of the continuation of August 14, 1914, wherein are found restrictions on said premises for a period of twenty-five years, against the use of the same for the erection of any buildings to be used for slaughter houses and the killing of animals,