

1681

JUSTICE OF PEACE—CONSTABLE—MAY NOT BE PAID ALLOWANCES PROVIDED IN SECTION 3019 G. C. ON FELONY CASES WHERE JUSTICE AS EXAMINING MAGISTRATE BINDS THE ACCUSED OVER TO GRAND JURY AND JURY INDICTS ACCUSED BUT BEFORE TRIAL INDICTMENT NOLLED—NO EXCEPTION IN SUCH CASES.

SYLLABUS:

A justice of the peace and/or constable may not be paid allowances provided in Section 3019, General Code, on felony cases where the justice of the peace, as an examining magistrate, binds the accused over to the grand jury and the grand jury indicts the accused but before the trial the indictment is nolle, nor can any exception be made in such cases.

Columbus, Ohio, April 21, 1950

Hon. James R. Goslee, Prosecuting Attorney
Logan County, Bellefontaine, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Lost cost bills presented to me by justices of the peace and constables, section 3019, have given me some difficulty. A number of these lost costs resulted from felony cases in which an indictment was had only to be nolleed by the Prosecuting Attorney, original affidavits having been filed by peace officers or members of the State Highway Patrol.

In studying section 3019 of the General Code together with opinions of the Attorney General cited thereunder, it would appear that the justices of the peace acting as magistrates in such cases have no means whatsoever of being paid their costs. It would appear that the most recent rulings are somewhat harsh upon the justices of the peace and constables in cases where they have acted in good faith upon the affidavit of the peace officers or State Highway Patrolmen and an indictment has been returned.

I am therefore wondering whether or not certain exceptions might be made in such cases and would very much appreciate your informal opinion as to the legality of approving payment of lost costs in these instances."

Section 3019, General Code, reads as follows:

"In felonies wherein the state fails, and in misdemeanors wherein the defendant proves insolvent, the county commissioners, at the first meeting in January, shall make an allowance to justices of the peace and constables, in the place of fees, but in no year shall the aggregate allowance to such officer exceed the fees legally taxed to him in such causes, nor in any calendar year shall the aggregate amount allowed such officer and his successor, if any, exceed one hundred dollars. If there be a successor, said amount shall be prorated on the basis of lost fees."

It must be borne in mind that costs, as such, were unknown at common law. Costs are, therefore, entirely dependent upon statute, and may be regulated, changed or entirely taken away at the will of the legislature. See *Bell v. Bates*, 3 Ohio, 380.

In Opinions of the Attorney General for 1932, Vol. III, page 1460, the then Attorney General, at bottom of page 1462 and at the top of page 1463, made the following observations in his interpretation of Section 3019, General Code:

“* * * The mere fact that no compensation is provided for or allowance made in those cases wherein the accused is not indicted by a grand jury after being bound over by a justice of the peace is one of the burdens which attaches to the office of a justice of the peace and which is assumed when a person is elected thereto. This is so even though the services performed in criminal proceedings by a justice of the peace as an examining magistrate are required by statute. The fact that a justice may not receive compensation for certain services rendered is not unique to the law.’

In Opinions of the Attorney General for 1934, Vol. II, page 946, the then Attorney General in a very exhaustive opinion in his interpretation of Section 3019, held in the third branch of the syllabus as follows:

“The allowance provided in section 3019, General Code, for a justice of the peace and constable may not be paid them in felony cases where the justice of the peace, as an examining magistrate, binds the accused over to the grand jury and the grand jury indicts the accused but before the trial the indictment is nolleed.”

From a careful reading of your communication, I interpret it to present the identical question answered by the Attorney General in the syllabus above quoted, in which I concur. I am unable to find any provision of law which authorizes a deviation therefrom.

Therefore, in specific answer to your question, it is my opinion that a justice of the peace and/or constable may not be paid allowances provided in Section 3019, General Code, in felony cases where the justice of the peace, as an examining magistrate, binds the accused over to the grand jury and the grand jury indicts the accused but before the trial the indictment is nolleed, nor can any exception be made in such cases.

Respectfully,

HERBERT S. DUFFY,
Attorney General.