

in cases where the commissioners by unanimous vote declare their intention to locate, establish, widen, straighten, vacate or change the direction of a road without a petition therefore, but otherwise the proposal to dedicate land for road purposes together with the acceptance of the grant by the commissioners shall constitute the lands so dedicated a public road, without any further proceedings thereon."

This statute does not in its terms refer to the platting of land,—it concerns merely the dedication of lands for road purposes. A description and plat of the lands proposed to be dedicated is required; but plainly, such plat is for the purpose only of showing the course and nature of the proposed road. Furthermore, the statute made its appearance in connection with the revision of the highway laws commonly known as the Cass Act (106 O. L. 574); and, again, the statute names the road records as the place of recording of the documents relative to dedication.

For the reasons just given, it is quite plain that the statute cannot be read so as to have any effect upon the platting statutes first above referred to. Therefore, such platting statutes and said section 6886 are to be given full force and effect each within its own sphere. It is unnecessary here to express an opinion upon the question whether county commissioners in the case of the proposed dedication of a road under section 6886 as distinguished from the incidental dedication of streets in connection with the platting of a tract of land, have power to require the grading and draining of the road prior to accepting the dedication thereof on behalf of the public,—it is sufficient to say that a person who plats lands outside of a municipal corporation is not under the necessity of presenting his plat to the county commissioners, and is at liberty to record the same without so presenting it, provided that he complies with the provisions of section 3580 et seq. and in certain instances with section 4346.

Hence, answer to your question may be made by the statement that section 6886 G. C. has no reference to the platting of lands and does not have the effect of requiring approval of the county commissioners as a condition precedent to the recording of plats of lands outside of municipal corporations, even though such plats may show a dedication of streets or roads to public use.

Respectfully,

JOHN G. PRICE,  
Attorney-General.

1248.

SCHOOLS—FEES RECEIVED FOR GRANTING OF CERTIFICATE AND RENEWAL OF CERTIFICATES TO TEACHERS BY SUPERINTENDENT OF PUBLIC INSTRUCTION PAYABLE INTO STATE TREASURY—ALSO FEES RECEIVED FROM CERTIFICATES ISSUED BY SUPERINTENDENT OF PUBLIC INSTRUCTION AND REQUIRED OF APPLICANTS WHO DESIRE TO BE LICENSED AS DENTISTS—SAME RULE AS TO FEES APPLICABLE WHEN CERTIFICATE ISSUED FOR LOST OR DESTROYED CERTIFICATE.

1. *Under the provisions of section 24 G. C., the fees received by the superintendent of public instruction from applicants during any week, for the granting of certificates and renewal of certificates by such superintendent of public instruction, must be paid into the state treasury on or before Monday of the following week, and there is no provision in existing law for the return of such fees even though the certificate or the renewal of any certificate has not been granted.*

2. *The certificate from the state superintendent of public instruction required*

to be presented to the state dental board by a person who desires to be licensed as a dentist, comes within the above rule for section 1321-1 G. C. and specifically provides that the fee for such certificate shall be paid into the state treasury, and there is no provision in existing law for its return.

3. Where a certificate issued by the superintendent of public instruction is lost or destroyed and the holder thereof makes application for a duplicate certificate, the superintendent of public instruction should charge the same fee for a duplicate certificate where the original has become lost or destroyed as is required in the case of the original issue of any certificate, such fee to be turned into the state treasury in accordance with the provisions of section 24 G. C.

COLUMBUS, OHIO, May 14, 1920.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter of April 14th, in which you desire to know whether the fees which are to be paid to the superintendent of public instruction by applicants for certificates, such fees being received with the application, should be returned to the applicants, where such certificates are not granted, or renewed, or on the other hand deposited in the state treasury, whether such renewal was granted or such certificate was issued or not.

Sections 7807-3, 7807-4, 7807-5, 7807-9 and 7807-10 of the General Code, provide for the granting of professional certificates upon application to the superintendent of public instruction and the payment of a fee of one dollar. The last two sections herein cited (7807-9 and 7807-10) are recent enactments and appear in 108 O. L. 622.

Sections 7821-1 and 7845 of the General Code provide for the renewal of five and eight year certificates granted by county boards of school examiners and city boards of school examiners, respectively, such certificates to be renewed by the superintendent of public instruction upon certain conditions specifically set forth, if such application for renewal be accompanied by a fee of fifty cents and shall be filed in the office of superintendent of public instruction.

The first part of section 7807-6 General Code provides that the superintendent of public instruction shall renew state provisional certificates upon application by the holders thereof, accompanied by a fee of one dollar upon satisfactory evidence of the applicant's success in teaching.

Section 1321-1 of the General Code provides that an applicant before the state dental board asking to be licensed as a dentist, shall also present with his application a certificate from the state superintendent of public instruction that he is possessed of a general education equal to that required for graduation from a first grade high school in this state; that the fee for such certificate shall be one dollar, payable to the superintendent of public instruction and by him paid into the state treasury to the credit of the general revenue fund.

A careful examination of all of these sections upon the issuing of certificates and the renewing of the same fails to show any tendency on the part of the general assembly that, where an application has been received with the fee required, and an investigation of the facts made by the department of public instruction, if such certificate or renewal shall not be granted, the fee accompanying the application should be returned to the applicant. It is true that the language appearing in the various sections is not entirely clear upon the point in question, and the presumption could well hold that this fee from the applicant is received by the superintendent of public instruction as payment for the cost of investigation and verification, which is required in all instances of this kind. It must be recognized that the applicant for a certificate, or a renewal of the same, receives just the same service from the state

as regards the investigation and labor performed as where the certificate is granted or renewed. That is to say, just as much time of employes of the state is taken in one instance as in the other. In fact, where a case was long drawn out and in the end the applicant did not receive the certificate or the renewal, it might have happened that the department had spent both time and postage in a greater degree than in the case where a certificate or renewal had been granted without requiring investigation and verification.

It would not seem proper that an applicant for one kind of certificate should have his fee returned and an applicant for another kind of certificate should not have his fee returned, and again, were such a policy adopted it would lead to considerable unnecessary bookkeeping and the care of public moneys in the department of public instruction, for which proper provision by the state may not have been made. Possibly the clearest intent of the legislature on this matter is the language which appears in sections 7821-1 and 7845, which read in part as follows:

*Section 7821-1:* " \* \* \* Each application for renewal shall be accompanied by a fee of fifty cents and shall be filed in the office of the superintendent of public instruction."

*Section 7845:* " \* \* \* Each application for renewal shall be accompanied by a fee of fifty cents and shall be filed in the office of the superintendent of public instruction."

These two sections say directly that the application must be accompanied by the fee and the application is not complete without the receipt of the fee, that is, the mere receipt of the application without the accompanying fee would bring no action in the office of the superintendent of public instruction. If the application is to be filed in the office of the superintendent of public instruction and becomes a part of the permanent records, then it means the complete application, that is, an application that has been paid for properly and marked so on the record. These same two sections illustrate in a way the necessity of a fee being paid by the applicant, for section 7821-1 says that the certificates now granted shall be renewed by the superintendent of public instruction "upon proof that the holders thereof have taught successfully until the time of each renewal." Again, section 7845 says that all five or eight year certificates granted shall continue in force until the end of their terms and shall be renewed by the superintendent of public instruction "upon proof that the holders thereof have taught successfully until the time of each renewal." Thus there is put upon the superintendent of public instruction the duty of assembling facts that would prove that the holders of the certificates have taught successfully until the time of each renewal and this might mean considerable correspondence in the way of verification of claims made by the applicant, and it is only proper that since the applicant is to be the beneficiary of such investigation, he should be willing to pay for such investigation.

If the general assembly had intended that these small fees should be returned to the applicants where certificates or renewals had not been granted, it would seem that the law-making body would have said so in the statutes, as there are a number of other instances in other laws where rebates or the returning of at least a part of fees and licenses is provided for. But no such provision as regards the certifying sections is found. On the other hand attention is invited to that section of the Ohio statutes which governs the fiscal operations as regards fees paid in to every state officer, department or institution. This is section 24 G. C. and reads in part as follows:

"On or before Monday of each week every state officer, state institu-

tion, department, board, commission, college, normal school or university receiving state aid shall pay to the treasurer of state all moneys, checks and drafts received for the state, or for the use of any such state officer, state institution, department, board, commission, college, normal school or university receiving state aid, during the preceding week, from taxes, assessments, licenses, premiums, fees, penalties, fines, costs, sales, rentals or otherwise, and file with the auditor of state a detailed verified statement of such receipts. \* \* \*

The only provision for a refund in the above section is that provided for in the case of colleges and universities receiving state aid, where there can be refund of tuition and fees incidental to conducting said institutions, but this refund provision in section 24 does not apply to the department of public instruction.

It would appear, therefore, that the fees which are sent in to the superintendent of public instruction by applicants under the various sections herein enumerated, providing for the granting of certificates or the renewal of the same, should be paid into the state treasury on Monday of each week, as provided in section 24 G. C. supra.

Attention is invited to opinion No. 825, issued to the auditor of state on December 2, 1919, wherein sections very similar in effect to those cited by you were construed by this department. These sections bore upon the question of the return of fees by the department of the state fire marshal after they had once been received by that official, and the opinion held that the fee was a part of the application, that the head of the department could take no action under the application alone unless accompanied by the fee and that the fee was an integral part of the application; that following the receipt of the fee by the state fire marshal his duty was clear under section 24 G. C., supra, in depositing such fees received during the week on the following Monday in the state treasury, and the opinion further held in that case that if any fees were returned by the state fire marshal, it was done without legal authority and the state fire marshal was responsible for such fees returned. It would seem, therefore, that the principles laid down in opinion No. 825 could well apply in the case at hand, and for your further information a copy of such opinion is herewith enclosed.

In your closing question you desire to know if a teacher's certificate of any class above mentioned becomes lost or destroyed and the holder thereof makes application for a duplicate certificate, shall a fee be charged for the granting of such duplicate certificate? In reply it is advised that as far as can be ascertained there is no provision in the statutes which says that certificates, as above described, shall be replaced by the superintendent of public instruction without cost, and since a fee is required under the various sections herein enumerated for the service in the first instance, it would appear that since a verification record is necessary and a certificate is issued which has all the effect of the one that is lost, when such second application has been approved by the superintendent of public instruction the latter official is justified in charging the same fee for a certificate where the original has become lost or destroyed as is required in the case of the original issue of such certificate.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*