

General for 1926 at page 565. By that opinion an administrative practice was established which has since been followed, and the Supreme Court has quite recently ruled in the case of *State ex rel vs. Brown*, 121 O. S. 73, reported in Ohio Bar for July 9, 1929, as stated by the Court in that opinion:

"It has been held in this state that 'administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do.' *Industrial Commission vs. Brown*, 92 Ohio St., 309, 311, 110 N. E., 744, 745, (L. R. A., 1916B, 1277). See, also, 36 Cyc., 1140, and 25 Ruling Case Law, 1043, and cases cited."

The administrative interpretation in this state has apparently been acquiesced in until the present time and this lends force to the views which I have hereinabove expressed.

I am therefore of the opinion that where land trust certificates owned by a bank are set forth by it in its statement of resources, neither the real value of such land trust certificates nor the proportionate amount of the tax upon the real estate which is the subject of the trust, can be deducted by the auditor from the total value of the shares of such bank.

Respectfully,
GILBERT BETTMAN,
Attorney General.

737.

SHERIFF'S FEES—RECEIVING AND DISCHARGING FROM COUNTY JAIL
DEFENDANT IN MAYOR'S COURT—TAXED AS COSTS AGAINST
DEFENDANT.

SYLLABUS:

When a city is without a jail and a prisoner is received into the county jail under the provisions of Section 4564, General Code, by the sheriff pending trial in the mayor's court, the sheriff's fees for receiving and discharging a prisoner, as provided for in Section 2845 of the General Code, should be taxed as costs and collected from the defendant in the event of conviction, whether the same is a state or ordinance case.

COLUMBUS, OHIO, August 13, 1929.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your recent communication, which reads:

"Section 2845, General Code, provides fees for the county sheriff; among others, for receiving a prisoner, fifty cents; and for discharging or surrendering a prisoner, fifty cents, to be charged but once in each case.

Section 4564, G. C., provides in part that any corporation not provided with a work house or other jail shall be allowed for the purpose of imprisonment the use of the jail of the county at the expense of the corporation until it is provided with a prison, etc.

Sections 4554, 4555 and 4556, G. C., seem to provide for all of the fees that may be taxed for prosecutions in the mayor's court.

QUESTION: When a city is without a jail and prisoners are received into a county jail by the sheriff pending trial in the mayor's court, may the sheriff's fees for receiving and discharging a prisoner be taxed in the costs by such mayor in both state and ordinance cases and be collected from the defendants?"

Section 2845, General Code, as stated in your communication, expressly authorizes, among other things, that the sheriff shall charge fifty cents for receiving a prisoner and the same amount for discharging or surrendering a prisoner, to be charged but once in each case. Said Section 2845 further provides that the items of fees allowed therein as costs shall be taxed in the bill of costs against the judgment debtor or those legally liable therefor by the court or clerk thereof. The provision above mentioned relative to taxing the costs by the clerk is found at the beginning of said lengthy section. After setting forth a great number of specific fees to be charged for designated duties, said section concludes with the following language:

"When any of the foregoing services are rendered by an officer or employe, whose salary or per diem compensation is paid by the county, the legal fees provided for such service in this section shall be taxed in the costs in the case and when collected shall be paid into the general fund of the county."

As stated in your communication, Sections 4555 to 4556, inclusive, of the General Code, provide the fees to be received by various officers in connection with prosecutions in the mayor's court. Section 12375 of the General Code provides as follows:

"In all sentences in criminal cases, including violations of ordinances, the judge or magistrate shall include therein, and render a judgment against the defendant for the costs of prosecution; and, if a jury has been called in the trial of the cause, a jury fee of six dollars shall be included in the costs, which when collected shall be paid to the public treasury from which the jurors were paid."

There is some doubt whether Section 12375 standing alone would be sufficient to include fees for admitting a prisoner to jail or discharging him as costs of prosecution. However, when construed in connection with Section 2845, which the rules of construction require, there seems to be no doubt but that such charges are properly a part of the cost of prosecution. While it appears that if the prisoner whose trial is pending before the mayor, in the event that he should be committed to the municipal jail, would not be required to pay such fees for being admitted and discharged from such municipal jail, there seems to be no exception to the rule that when he is committed to the county jail, such fees shall properly be charged and taxed as the costs in connection with such prosecution.

Section 4564 of the General Code provides:

"Imprisonment under the ordinances of a municipal corporation shall be in the work-house or other jail thereof, if the corporation is provided with such work-house or jail. Any corporation not provided with a work-house, or other jail, shall be allowed, for the purpose of imprisonment, the use of the jail of the county, at the expense of the corporation, until it is provided with a prison, house of correction, or work-house. Persons, so imprisoned in the

county jail shall be under the charge of the sheriff of the county, who shall receive and hold such persons in the manner prescribed by the ordinances of the corporation, until discharged by due course of law."

Without considering the early history of the sections to determine whether Section 4564 is a later enactment than Section 2845, it is believed sufficient to state that said Section 4564 has not been recently amended while Section 2845 was amended by the 83rd General Assembly, 108 Ohio Laws, Pt. 2, 1214, and in said amendment, the Legislature did not see fit to make any exception as to cases in which persons were held in jail pending trial before the mayor. If it had intended such exceptions, it would have been an easy matter in said amendment to have expressly made such provision. It cannot be contradicted that Section 2845, in unambiguous language, authorizes the sheriff to charge such fees for receiving prisoners and Section 4564, supra, certainly authorizes him to receive and keep the prisoner under the circumstances mentioned therein.

In view of the above, you are advised that it is my opinion that when a city is without a jail and a prisoner is received into the county jail under the provisions of Section 4564, General Code, by the sheriff pending trial in the mayor's court, the sheriff's fees for receiving and discharging a prisoner as provided for in Section 2845 of the General Code should be taxed as costs and collected from the defendant in the event of conviction, whether the same is a state or ordinance case.

Respectfully,

GILBERT BETTMAN,
Attorney General.

738.

ADVERTISEMENT—FOR PURCHASE OF TRUCK BY TOWNSHIP TRUSTEES—DESCRIPTION BY NAME RATHER THAN MECHANICAL SPECIFICATIONS VIOLATIVE OF REQUIRED COMPETITIVE BIDDING.

SYLLABUS:

Where township trustees, desiring to purchase a truck for use in connection with the maintenance of township roads, in the specifications of the equipment desired as set forth in its advertisement for bids, describe said truck by name as contradistinguished from mechanical specifications, there is a violation of the principle of competitive bidding required under the provisions of Section 3373 of the General Code.

COLUMBUS, OHIO, August 14, 1929.

HON. HENRY W. HARTER, JR., *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent communication, which reads:

"I desire your opinion in regard to the following situation:

The township trustees of Canton Township, Stark County, Ohio, being desirous of purchasing a certain make of truck under authority of Section 3373 for use in connection with maintenance of township roads, have advertised as provided in that section, but instead of describing the truck for the