

Another instance requiring the above interpretation in order to carry out the clear intent of the provisions of section 7748, General Code, might arise in a district when first establishing a second grade high school, and in which district reside children of school age who have of necessity finished the work of a second grade high school outside the district of their residence, and are therefore entitled to have their tuition paid for an additional year in a first grade high school.

Therefore, I am of the opinion that the term "graduate" as used in section 7748, General Code, in the phrase "a board of education providing a second grade high school shall pay the tuition of graduates residing in the district at any first grade high school for one year" should not be restricted to graduates of the second grade high school maintained in said district, but may include pupils who have completed the work of a second grade high school or the equivalent thereof, but who may have not at any time attended the second grade high school of the district of their residence, and in the instant case the board of education of the Milford township rural school district should pay the tuition of the pupil in question for his fourth year in the Hamilton high school.

Respectfully,

C. C. CRABBE,

Attorney General.

2534.

JURY FEES IN CONDEMNATION PROCEEDINGS—PROBATE JUDGE NOT ENTITLED TO FEE OF FIVE DOLLARS AS PROVIDED IN SECTION 11089 G. C.

SYLLABUS:

1. *Jury fees should not be taxed against the board of education as part of the costs in a condemnation proceeding, but should be certified and paid as regular jury fees are paid in the common pleas court.*

2. *A probate judge is not entitled to a fee of five dollars per day as provided in section 11089, General Code.*

COLUMBUS, OHIO, June 3, 1925.

HON. G. O. MCGONAGLE, *Prosecuting Attorney, McConnelsville, Ohio.*

DEAR SIR:—I am in receipt of your communication as follows:

"In a proceeding by the board of education under section 7624 G. C. to appropriate land for sewage disposal purposes which goes to final judgment and a verdict for both compensation for the land taken and damages to the residue is returned by the jury in the probate court and neither party desiring to proceed further and the plaintiff taking the property, when it comes to the matter of taxing costs should the jury fees be by the court taxed against the board of education or certified and paid as regular jury fees are paid, by the county, in the court of common pleas in other cases?

"In such proceedings is the probate judge entitled to a fee of five dollars per day as provided in section 11089 G. C. relating to appropriation proceedings by private corporations?

"I have recently represented one of our township boards in such a proceeding and we are now up to the question of taxing costs."

Section 7624, General Code, provides that for school purposes, the board of education may condemn or purchase real estate and the same proceedings shall be had as provide for appropriation of private property by municipal corporations. The sections for appropriation of private property by municipal corporations are 3677 G. C. et seq.

Section 3693, relating to the costs of such appropriations provides in part as follows:

"The costs of the inquiry and assessment shall be paid by the corporation and all other costs taxed as the court directs. * * *"

In the case of Hill vs. Durr, 47 Weekly Law Bulletin, page 440, the court held:

"Jury fees have never been called 'expenses,' in a suit by any statute we have found, and under the provisions for drawing and impaneling a jury in the several courts, we do not believe that such fees are a part of the costs of the case."

The opinion of the court in this case was followed in the case of Rapid Railway Company vs. H. S. Heat, relating to condemnation proceedings under section 6451, revised statutes, and the circuit court, in that case, held that on the authority of Hill vs. Durr, the jury fees were not a part of the costs of such suit, and, therefore, not to be paid by the plaintiff but should be paid from the county treasury, the same as jury fees in the court of common pleas.

You are therefore advised that jury fees should not be taxed against the board of education as part of the costs of such case, but should be certified and paid as regular jury fees are paid in the common pleas court of such county.

Section 11089 G. C., relates to appropriation proceedings for private corporations and provides a fee of five dollars a day for the probate judge for hearing said appropriation cases.

Section 11091, G. C. provides as follows:

"The provisions of this chapter shall not apply to proceedings by state, county, township, district, or municipal authorities, to appropriate private property for public uses, or for roads or ditches."

This section would make section 11089 G. C., relating to the fees of the probate judge, not applicable in appropriation proceedings by a board of education. I am unable to find any section of statute which provides a fee for the probate judge in appropriation proceedings by a political subdivision. The fees allowed to a probate judge are enumerated in sections 1601 and 1602 G. C., but in such sections no mention is made of fees allowed for appropriation of private property by a political subdivision.

Section 1603 G. C. provides:

"For other services for which compensation is not otherwise provided by law the probate judge shall be allowed the same fees as are allowed the clerk of the court of common pleas for similar services."

This section would seem to limit the fees of the probate judge unless otherwise

provided for by law, to the fees for the clerical work in connection with any proceedings in his court.

It is, therefore, my opinion that a probate judge is not entitled to a fee of five dollars per day as provided in section 11089 G. C.

Respectfully,
C. C. CRABBE,
Attorney General.

2535.

APPROVAL, BONDS OF VILLAGE OF CUYAHOGA HEIGHTS, CUYAHOGA COUNTY, \$17,000.00.

COLUMBUS, OHIO, June 3, 1925.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

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2536.

APPROVAL, BONDS OF VILLAGE OF GARFIELD HEIGHTS, CUYAHOGA COUNTY, \$15,288.18.

COLUMBUS, OHIO, June 3, 1925.

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

2537.

APPROVAL, BONDS OF VILLAGE OF MAPLE HEIGHTS, CUYAHOGA COUNTY, \$16,000.00.

COLUMBUS, OHIO, June 3, 1925.

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