

edged by said persons and that as to its form said deed is sufficient to convey said above described property to the State of Ohio in fee simple, free and clear of the dower interest of said Annie I. West and free and clear of all incumbrances whatsoever, save the exceptions stated in the warranty clause of said deed as follows:

“Save and except the oil and gas lease thereon and the pipe line rights of way thereover and said premises are so conveyed subject thereto and to State Highway No. 7, and the rights of way of the Kanawha Traction and Electric Company, The Crescent Producing Company and The Ohio Bell Telephone Company along, over and near said highway.”

Encumbrance estimate No. 138, relating to the purchase of the above described property, has been properly executed and approved and the same shows sufficient balances in the proper appropriation account to pay the purchase price of this property, which is the sum of eight thousand seven hundred and fifty dollars (\$8,750.00).

It likewise appears that the board of control, acting under the provisions of Section 11 of House Bill No. 510, has released from the appropriation account sufficient moneys to pay the purchase price of this property.

I am herewith returning to you with my approval, subject to the exceptions above noted, the abstract of title to this property, as well as said warranty deed, encumbrance estimate No. 138, the controlling board certificate and other files submitted by you relating to the purchase of this property.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2109.

MUNICIPAL COURT—AKRON—DEDUCTION OF ALLOWANCE OF COUNTY COMMISSIONERS TO JUDGES, CLERK AND PROSECUTING ATTORNEY NECESSARY BEFORE FINES ARE TURNED OVER TO LAW LIBRARY ASSOCIATION—EXCEPTION.

SYLLABUS:

In view of the provisions of Sections 1579-501 and 3056 of the General Code it is necessary to deduct the total amount of the allowance to all of the judges, clerk and prosecuting attorney in determining the amount to be distributed to the Law Library Association, excepting the minimum of fifteen per cent (15%) which is to be distributed to the Library Association without making such deduction. The character of the cases being tried by such judges has no bearing upon the question.

COLUMBUS, OHIO, July 19, 1930.

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

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

“Section 1579-501, G. C., Akron Municipal Court Act, as amended 113 O. L., page 67, reads:

‘The court shall consist of five judges, all of whom shall be qualified electors and residents of the city of Akron, and shall have been admitted to

the practice of law in the state of Ohio for at least five years. Each judge shall receive a salary of six thousand dollars per annum, payable in monthly installments, two thousand dollars of which shall be paid out of the treasury of Summit County, and four thousand dollars of which shall be paid out of the treasury of the city of Akron. The vacations of the respective judges shall not exceed thirty days in any year and shall be at such times as may be fixed by the judges, and shall be so fixed that at least three judges shall be in attendance at all times.'

Section 3056, G. C., as enacted 113 O. L., page 249, provides in part that: 'All fines and penalties assessed and collected by a municipal or police court for offenses and misdemeanors prosecuted in the name of the state, except a portion thereof equal to the compensation allowed by the county commissioners to the judges, clerk and prosecuting attorney of such court in state cases shall be retained by the clerk and be paid by him monthly to the trustees of such law library associations, but the sum so retained and paid by the clerk of said municipal or police court to the trustees of such law library association shall in no month be less than 15 per cent of the fines and penalties collected in that month without deducting the amount of the allowances of the county commissioners to said judges, clerk and prosecutor.'

Question 1. In view of the mandatory provisions of Section 1579-501, G. C., that each judge of the Akron Municipal Court be paid \$2,000.00 per annum from the county treasury, is such amount to be considered an allowance by the county commissioner within the meaning of Section 3056, G. C.?

One of the five judges of the Akron Municipal Court is assigned to criminal cases and four to civil cases.

Question 2. May the compensation of the one judge assigned to criminal cases be considered the allowance of the county commissioner?

Question 3. May the county commissioners by appropriate action, make an allowance as compensation to the judges of the Municipal Court, which allowance could be considered a part of the \$2,000.00, amount payable to each judge out of the county treasury, and be considered in determining the amount due the county Law Library Association in accordance with the provisions of Section 3056, G. C.?"

It is understood that your inquiry arises by reason of the fact that in the case under consideration the allowance by the county commissioners to the municipal judges is two thousand dollars (\$2,000.00) to each judge or ten thousand dollars (\$10,000.00) per annum and that the effect of deducting such allowance from the fines arising in state cases makes it practically impossible for the Law Library Association to receive any fees under the provision of Section 3056, General Code. It is contended by some of the interested parties that the legislative intention in the enactment of Section 3056, General Code, which you quote, was that the allowance to be granted by the county commissioners was for compensation in trying state cases. In other words, it is contended that inasmuch as only one judge in the city of Akron is ever engaged in trying criminal cases it follows that only one judge comes within the provision of the exception in said section and therefore instead of using ten thousand dollars (\$10,000.00) as the annual basis for computing such deduction, two thousand dollars (\$2,000.00) should be used as said basis. There is some logical basis for the argument made for the reason that the phrase "state cases," as used in the exception in Section 3056, General Code, could be construed as compensation allowed by the commissioners for trying state cases. However, while the point made is appreciated, it is believed that this argument does not offset the otherwise plain provisions of the section indicating that the compensation allowed by the county commissioners to the judges, clerk and prosecuting attorney shall be deducted. It

will be observed that the plural is used in mentioning the judges, whereas, of course, the clerk and prosecuting attorney is in the singular, which clearly indicates that the legislature had in mind that more than one judge would be included in said allowance. The section otherwise provides that not less than fifteen per cent (15%) of the fines and penalties collected shall be paid to the Law Library Association without deducting the amount of the allowance of the county commissioners to said judges. It follows therefore that there always will be some amount that will be turned over to the Library Association in the event that any fines are collected.

Considering Section 3056, General Code, as a whole, it is my opinion that it was the intention of the legislature in the enactment thereof that all of the allowances made by the county commissioners as salary to the judges, clerk and prosecuting attorney should be deducted before determining the amount due the Library Association, except the minimum of fifteen per cent (15%) hereinbefore mentioned.

I realize that there may be situations such as you describe which result in some hardships to certain library associations by reason of the peculiar facts, but it is believed that the remedy for such evils, if it is evil, is properly in the hands of the legislature.

In view of the foregoing and in specific answer to your inquiry, it is my opinion that in view of the provisions of Sections 1579-501 and 3056 of the General Code it is necessary to deduct the total amount of the allowance to all of the judges, clerk and prosecuting attorney in determining the amount to be distributed to the Law Library Association, excepting the minimum of fifteen per cent (15%) which is to be distributed to the Library Association without making such deduction. The character of the cases being tried by such judges has no bearing upon the question. In view of the conclusion I have hereinbefore reached it is believed unnecessary to make more specific answer to the inquiries propounded.

Respectfully,

GILBERT BETTMAN,

Attorney General.

2110.

APPROVAL, BONDS OF VILLAGE OF POWHATAN POINT, BELMONT COUNTY, OHIO—\$15,097.70.

COLUMBUS, OHIO, July 19, 1930.

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

2111.

LEGAL COUNSEL—BOARD OF EDUCATION AND COUNTY COMMISSIONERS MAY NOT HIRE OUTSIDE COUNSEL FOR AID IN PREPARATION OF BOND TRANSCRIPT—EXCEPTION NOTED.

SYLLABUS:

1. *Under the provisions of Section 4761, General Code, the prosecuting attorney is the legal adviser of all boards of education of his county except city boards of education, and as such it is his duty to render such legal advice as may be requested*