

1294.

JUSTICE OF PEACE—NOT AUTHORIZED TO CHARGE FEE FOR MAKING "RECORD"—MAY COLLECT FEE FOR COPY OF HIS DOCKET UNDER PROVISIONS OF SECTION 1746-2 G. C.

Under existing law a justice of the peace is not authorized to charge a fee for making a "record" in connection with the keeping of his docket, but is not excused from keeping the same as provided by law. However, under the provisions of section 1746-2 G. C., when a copy of his docket is made he may charge and collect a fee of ten cents per hundred words from the party for whom the service is rendered.

COLUMBUS, OHIO, May 28, 1920.

HON. JOHN L. CABLE, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR:—Your communication of recent date requesting my opinion is as follows:

"Under sections 1746 and 1746-1 of the General Code as last amended, no provisions are made whereby a justice of the peace is entitled to charge for the making of a record. Will you please advise if, in your opinion, a justice of the peace now should make a record of the case without any compensation?"

It will be assumed, in the use of the term "record" in your letter, you refer to the docket which the justice of the peace is required to keep. While said docket may be regarded as a "record" in a general sense, and undoubtedly serves such a purpose, it is not a "record" in the technical sense. Therefore, strictly speaking, a justice of the peace does not keep a record except in special cases, for instance, in administering the oath of office to a justice of the peace and making record thereof, the fees of which are specifically provided for.

Section 1746 G. C., prior to its last amendment, provided as follows:

"Except as otherwise provided, justices of the peace, for the services named, when rendered, may receive the following fees: * * * each writing or record not herein provided for, fifteen cents per hundred words."

It is believed that due to the provision of the above section, the practice of justices of the peace was to treat the writing in the docket as a "record" and make a charge therefor. Without deciding whether or not such a charge was proper under the original section, it will be observed that sections 1746 and 1746-1 G. C., as now in force, as stated in your letter, do not provide a fee for making the record, but do specify the fees which a justice may charge, which include "docketing" the numerous matters therein referred to.

There are statutes, which need not be cited here, specifying the manner in which said dockets shall be kept, and it is the duty of a justice of the peace to keep the same as provided by law, and, as above indicated, under existing law the fee sections include such services. However, your attention is invited to section 1746-2 G. C. (H. B. No. 294, 108 O. L.), which provides:

"For miscellaneous services, justices of the peace shall charge and collect from the persons for whom the services are rendered the following fees, and no more: Copy of any affidavit, writ, order or record, including certificate if required, ten cents per hundred words; * * *."

In view of the provisions above quoted, it is believed that in case a justice of the peace makes a copy of his docket, it may be regarded "as a copy of a record," to the end that he may charge and collect a fee of ten cents per hundred words from the person for whom the service is rendered.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1295.

DITCHES—NEW DITCH CODE (108 O. L. 926) ABOLISHED OFFICE OF TOWNSHIP DITCH SUPERVISOR—WHEN TENURE OF INCUMBENTS TERMINATED.

1. *With the becoming effective on October 10, 1919, of the New Ditch Code (108 O. L. 926), the office of township ditch supervisor was abolished and the tenure of incumbents terminated through the repeal of former sections 3386 et seq. G. C. However, by reason of section 26 G. C. proceedings pending on October 10, 1919, under such ditch supervisors, may be carried to a conclusion by them.*

2. *Section 6512 G. C. (section 71 of New Ditch Code), does not authorize the appointment of ditch supervisors.*

COLUMBUS, OHIO, May 28, 1920.

HON. LOUIS H. CAPELE, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—Your letter of recent date is received, reading:

"Will you kindly furnish this office with an opinion covering the following facts:

At the November election of 1918 a township ditch supervisor was elected in Anderson township, Hamilton county, Ohio, for a term of four years. This ditch supervisor entered into office on January 1, 1919, and has been acting in this capacity up to the present time. The question we desire to put, is whether or not the repeal of section 3386 et seq. of the General Code abolishes the office of township ditch supervisor prior to the time of the expiration of the term for which he has been elected? In other words, can a township ditch supervisor be legislated out of office?

These sections were repealed in Senate Bill 100, as found in 108 Ohio Laws, page 926.

¶The next question is that if the office of township ditch supervisor is abolished prior to the expiration of the term for which such supervisor was elected, can an appointment be made under section 6512, which is section 71 of Senate Bill No. 100, as found in 108 Ohio Laws, page 960, to cover the duties of such ditch supervisor?"

Said sections 3386 G. C. et seq., repealed by the New Ditch Code as of October 10, 1919, (108 O. L. 926), provided in brief that in any township in which county or township ditches have been located and established, "there may be elected a township ditch supervisor, who shall serve for a term of four years" (section 3386), and that (section 3389)

"The township ditch supervisor shall have the supervision of all township and county ditches in his township. He shall clean them out and keep