

This application to the Auditor of State for the issuance of duplicate of the above mentioned warrant is made for the purpose of acquainting said Auditor of State with the circumstances surrounding its loss or destruction and to enable him to determine whether there is any reasonable probability that said warrant will be presented for payment and for authority to submit a bond for the issuance of a duplicate of said warrant.

----- Witness -----	----- Applicant -----
----- Witness -----	----- Name of officer, if corpora- tion, and his capacity." -----

You have further inquired concerning the binding effect of the language of the application and I have referred to such application as solely for the satisfaction of the Auditor of State as to the circumstances of the case. The binding document is the bond form, which is given only after the Auditor of State is satisfied, according to the statute, that there is no reasonable probability of the warrant being found or presented for payment.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

209.

CERTIFICATE OF PURCHASE—COUNTY AUDITOR—FEE  
PAYABLE TO GENERAL FUND.

*SYLLABUS:*

*The fee provided for in Section 5762, General Code, is not to be retained by the auditor as personal compensation but must be collected and paid over with the other fees and charges of this office to the county treasurer as required under Section 2977, General Code.*

COLUMBUS, OHIO, March 4, 1937.

HON. E. DUDLEY HARRIS, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication which reads as follows:

“Sec. 5762 of the Code provides for the payment of \$1.25 by the holder of a certificate of purchase to the Auditor for the making and executing of a deed.

Question: What disposition does the Auditor make of this sum, retain it as a personal compensation or pay it over into the general fund.

The answer to the above question will indirectly answer our real question, which is can the Auditor use the said \$1.25 to compensate whoever is employed to get the description of the tracts sold? . . . .”

Section 5762, General Code, which is cited by you provides:

“The county auditor on making a sale of a tract of land to any person, under this chapter, shall give to such purchaser a certificate thereof. On producing or returning to the county auditor the certificate of sale the county auditor on payment to him by the purchaser, his heirs, or assigns, of the sum of one dollar and twenty-five cents shall execute and deliver to such purchaser, his heirs, or assigns, a deed therefor, in due form, which deed shall be prima facie evidence of title in the purchaser, his heirs, or assigns.”

It can be readily seen that the language used in this section clearly makes the preparation and execution of the deed provided for a service within the scope of the auditor's official duties. However, neither by express words or by implication is special compensation given for these services. The general rule with regard to the compensation of public officers is that they shall receive only such compensation as the law allows, and as is provided for by statute. No fees are allowed them upon implication. (Ohio Jurisprudence, Volume II, page 44) Public services required of or rendered by such officers which are within the scope of official duty and germane or incident thereto must be considered as gratuitous or compensated by salaries incident to the office in the absence of provisions for special compensation. (*State ex rel. Enos vs. Stone*, 90 O. S. 63.)

Provisions relating to the fees, charges, etc., coming into the hands of the county auditor may be found in sections 2977 and 2978, General Code, which provide as follows:

Sec. 2977. “All the fees, costs, percentages, penalties, allowances and other perquisites collected or received by law as compensation for services by a county auditor, county treasurer, probate judge, sheriff, clerk of courts, surveyor or recorder,

shall be so received and collected for the sole use of the treasury of the county in which they are elected and shall be held as public moneys belonging to such county and accounted for and paid over as such as hereinafter provided."

Sec. 2978. "Each probate judge, auditor, treasurer, clerk of courts, sheriff, surveyor and recorder, shall charge and collect the fees, costs, percentages, allowances and compensation allowed by law, and shall give to the person making payment thereof an official receipt in manner and form as may be prescribed by the bureau of inspection and supervision of public offices."

These sections clearly indicate that all such fees and costs are to be received and collected for the sole use of the treasury of the county where they are collected.

Consistent with these provisions are those appearing in Sections 2981 and 2987, General Code, that all deputies, assistants, employees and clerks appointed and employed under the certain county offices enumerated in Sections 2977 and 2978, *supra*, shall be paid from the county treasury as provided for by these sections.

In view of these very plain statements of the law it is my opinion that the \$1.25 fee provided for in Section 5762, General Code, is not to be retained by the auditor as personal compensation, but must be collected and paid over with the other fees and charges of this office to the county treasurer as required under Section 2977, General Code.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

---

210.

MUNICIPAL COURT CLERK—CLERK—ASSIGNMENT OF INTEREST DEPOSITORY FUNDS—PUBLIC MONEY\* TRUST FUND—CITY TREASURER—FINDING AGAINST CLERK.

*SYLLABUS:*

1. *A municipal court clerk has no authority under Section 11728-1,*