

2788.

APPROVAL, BONDS OF MAYFIELD RURAL SCHOOL DISTRICT IN AMOUNT OF \$65,000.

COLUMBUS, OHIO, January 13, 1922.

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

2789.

APPROVAL REFUNDING BONDS OF MAYFIELD RURAL SCHOOL DISTRICT IN AMOUNT OF \$5,000.

COLUMBUS, OHIO, January 13, 1922.

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

2790.

APPROVAL, BONDS OF MADISON TOWNSHIP RURAL SCHOOL DISTRICT IN AMOUNT OF \$200,000.

COLUMBUS, OHIO, January 13, 1922.

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

2791.

JUSTICES OF PEACE—FEES IN CRIMINAL CASES WHERE EVIDENCE IS AND IS NOT INTRODUCED—FEES IN CIVIL CASES ALSO PASSED UPON—SECTION 1746-2 G. C. RELATIVE TO FEES OF JURYMEN IN CONFLICT WITH SECTION 10357 G. C.—LATTER SECTION REPEALED TO EXTENT OF SUCH INCONSISTENCY—JURYMEN ENTITLED TO FEE OF \$1.50 IN EACH CASE.

1. *In any case in which a justice of the peace disposes of a case which is properly brought before him in which no evidence is introduced, he is entitled to a fee of one dollar.*

2. *In any criminal case in which evidence is introduced a justice of the peace is entitled to a fee of two dollars, unless a jury trial is had, in which case he is allowed two dollars and fifty cents. In a civil case which is disposed of upon the appearance of the parties without trial the justice is entitled to one dollar. In those cases in which a defense is interposed and evidence is introduced or a trial had, the justice is entitled to two dollars, unless there is a jury trial, in which case he is entitled to two dollars and fifty cents.*

3. *The provisions of section 1746-2 G. C. relative to the fees of jurymen are in conflict with the provisions of section 10357 G. C., and the latter section is re-*

pealed by the former to the extent of such inconsistency. It follows that a jurymen is entitled to a fee of one dollar and fifty cents in each case.

COLUMBUS, OHIO, January 14, 1922.

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

GENTLEMEN:—Your communication of recent date is as follows:

“We respectfully request your written opinion upon the following:

1. Section 1746 G. C., as amended, 109 O. L. 303, relating to fees of justices of the peace in criminal proceedings contains the following provision:

‘hearing case, on appearance before evidence is introduced, one dollar; hearing case where evidence is introduced, two dollars;’

In a case where a defendant is brought before a justice of the peace on warrant, a plea of ‘not guilty’ entered and the case continued to another day when evidence was introduced, no evidence being given the first day, may a justice of the peace charge one dollar for the first hearing and two dollars for the second where evidence was introduced, a total of three dollars, or is he limited to two dollars for the entire case.

2. Section 1746-1 G. C., as amended by the same act, provides the following fee in civil cases:

‘hearing case on appearance, without trial, one dollar; hearing case where defense is interposed, two dollars;’

Section 1746-2 G. C., as amended by the same act, provides the following fee:

‘trial by jury, sitting in each case, two dollars and fifty cents;’

In a case where both parties appeared on the day set for hearing, stated their cases, filed bills of particulars and asked for a jury, whereupon the case was adjourned to another day, may the justice charge one dollar for the hearing on the first day and two dollars and fifty cents for the jury trial on the next day, a total of three dollars and fifty cents, or can he only charge two dollars and fifty cents for the entire case?

3. Does the wording of the last part of section 1746-2 G. C., of the same act, fix the fees of jurymen at one dollar and fifty cents each?”

In considering the provisions of the statutes relating to fees of justices of the peace for hearings, etc., which are sufficiently set forth in your communication, it may be helpful to briefly refer to the history of the legislation.

Prior to 1919, section 1746 G. C. provided for the fees of justices of the peace for such services in both civil and criminal cases, as follows:

“* * * sitting in the trial of a cause, civil or criminal, where a defense is interposed, whether tried to the justice or to a jury, one dollar;”

In 1919 (108 O. L., Part II, p. 1203), section 1746 G. C. was amended so as to apply to criminal cases only. Said section provided in this enactment,

“* * * hearing case, except on plea of guilty before evidence is introduced, one dollar;”

At the same time section 1746-1 was enacted, providing for the fees of the justice in a civil proceeding in the following language:

“* * * hearing case when defense is interposed, one dollar;”

Further, at this time section 1746-2 was enacted, providing for fees of justices of the peace for miscellaneous services. This section did not originally provide for any fees of justices of the peace in jury cases.

It will be observed that prior to the last legislation upon the subject a justice of the peace could not receive any compensation in those cases in which there was a plea of guilty, and there was some doubt as to what fees he should receive under other circumstances; for instance, when the defendant waived an examination and was bound over to court. It is evident that the legislature had two purposes in mind in this enactment; first to provide a fee covering cases in which no evidence was introduced, and second to increase the fee in those cases in which evidence was introduced. While it will be conceded that in reading the statute alone without the history of the legislation it could be contended that where the party had a preliminary hearing and later a trial was had in which evidence was introduced, that the justice would be entitled to one dollar for the first hearing and two dollars for the trial, making a total of three dollars, after consideration it seems clear that such a construction is not logical in view of the history of the act. There are two hearings provided for and referred to—first the hearing in which there is no evidence introduced, and second the hearing in which there is evidence introduced.

In the first situation you mention, where a plea of “not guilty” was entered by the defendant and the case continued to another day, when evidence was introduced, the entire procedure constitutes a hearing in which evidence was introduced. Therefore, the justice of the peace would be entitled to a fee of two dollars. The fact that the case was continued from one day to another has no particular significance.

It is believed that what has been said with reference to the first proposition may logically be applied to the second. In those cases, either civil or criminal, in which evidence is introduced, the justice of the peace is entitled to two dollars, excepting in those cases in which a jury trial is had, in which case, under the provisions of section 1746-2 G. C., a fee of two dollars and fifty cents is to be charged.

Your third inquiry will now be considered. Section 1746-2 G. C. 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:

* * * trial by jury, sitting in each case, two dollars and fifty cents, and fees of juryman, in each case, in justice court, one dollar and fifty cents.”

In this connection it is observed that section 10357 G. C. has never been expressly repealed, and provides as follows:

“Upon the verdict being delivered to the justice and before judgment rendered thereon, each juror shall be entitled to receive seventy-five cents per day for each day’s service as such juror, at the hands of the successful party, which shall be taxed in the costs against his adversary. When the jury is not able to agree upon a verdict, the same compensation shall be

paid them by the party calling the jury, and it must be taxed in the cost bill against the losing party, except as otherwise provided."

It seems clear from the language of section 1746-2 G. C. that it was the intent of the legislature that a jurymen should receive one dollar and fifty cents for sitting in each case. It will further be observed that if the trial continued for two days the jurymen would receive one dollar and fifty cents under section 10357 G. C. The former section provides for the fees "in each case" while the latter fixes per diem compensation. Undoubtedly the provision of section 1746-2 G. C. relative to the fees of jurymen are in direct conflict with the provisions of section 10357 G. C., especially when only one day is consumed in the trial. It is a well known rule of statutory construction that when legislation upon the same subject is in conflict the latter enactment will control. Therefore, it is believed that section 10357 G. C. should be regarded as repealed by implication in so far as it is inconsistent with the provisions of section 1746-2 G. C.

In view of the foregoing, it is the opinion of this department that:

(1) In any case in which a justice of the peace disposes of a case which is properly brought before him in which no evidence is introduced, he is entitled to a fee of one dollar.

(2) In any criminal case in which evidence is introduced a justice of the peace is entitled to a fee of two dollars, unless a jury trial is had, in which case he is allowed two dollars and fifty cents. In a civil case which is disposed of upon the appearance of the parties without trial the justice is entitled to one dollar. In those cases in which a defense is interposed and evidence is introduced or a trial had, the justice is entitled to two dollars, unless there is a jury trial, in which case he is entitled to two dollars and fifty cents.

(3) The provisions of section 1746-2 G. C. relative to the fees of jurymen are in conflict with the provisions of section 10357 G. C., and the latter section is repealed by the former to the extent of such inconsistency. It follows that a jurymen is entitled to a fee of one dollar and fifty cents in each case.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2792.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS,
LICKING, DEFIANCE, PORTAGE, WOOD AND PUTNAM COUNTIES.

COLUMBUS, OHIO, January 14, 1922.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

2793.

APPROVAL, FINAL RESOLUTIONS, ROAD IMPROVEMENTS IN PIKE
AND COSHOCTON COUNTIES, OHIO.

COLUMBUS, OHIO, January 14, 1922.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.