

and which authorized the additional work occasioned by reason of such change, to be paid for upon a cost plus basis, although said court was not giving consideration to that specific phase of the question. As hereinbefore indicated, it is believed that the policy of such a proceeding is left to the sound discretion of the proper municipal authorities and that as a matter of law such a contract may be made so long as the terms thereof definitely establish a rule whereby the final amount to be paid can be determined and so long as such terms would not constitute an abuse of discretion on the part of the municipal authorities. The foregoing conclusion is based of course to a great extent upon the proposition that the person to be so employed is especially qualified for such a service and that the nature of such work is such as to make it absolutely and essentially non-competitive in character. In this connection, it has been noted that in an opinion reported in the Annual Report of the Attorney General, 1914, page 1469, the then Attorney General held that an ordinance of the City of Toledo providing that employes in any of the departments of the city government should be paid the "prevailing wage rate extant in the city" did not comply with the provisions of Section 4214, supra, for the reason that it was not sufficiently definite and certain. However, it is believed that the facts considered by the then Attorney General are clearly distinguishable from the facts considered herein.

In view of the foregoing, it is my opinion that a municipality may employ an engineer to make a topographic and cadastral survey and provide for his compensation upon a cost plus basis, providing the terms of such a contract are sufficiently definite and certain to establish the rule whereby such compensation may be definitely computed.

The above conclusion has been reached with reference to the provision of the general law without consideration of the so-called Home Rule provisions of the Constitution of Ohio as set forth in Section 3 of Article 18 of said Constitution. However, it is believed that said provisions would in no wise limit the power of a municipality with reference to the conclusions hereinbefore reached, unless a municipality in the exercise of such Home Rule powers has adopted a charter or legislation inconsistent with the general law in respect to the matters considered herein.

Respectfully,

GILBERT BETTMAN,
Attorney General.

502.

MILEAGE—CONSTABLE MAY ONLY CHARGE FOR ACTUAL MILES COVERED WHEN SERVING TWO WARRANTS SIMULTANEOUSLY.

SYLLABUS:

Under Section 3347 of the General Code, where a constable travels and serves two warrants at the same time during the same journey, he is not entitled to charge separate mileage on each warrant, but only for the number of miles actually and necessarily travelled in order to serve both warrants.

COLUMBUS, OHIO, June 11, 1929.

HON. R. D. WILLIAMS, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—I am in receipt of your letter of May 4, 1929, which is in part as follows:

" * * *

A few weeks ago a constable in our county had two warrants, each looking toward the arrest and apprehension of a separate, distinct and different person. It happened that these defendants lived in the same locality. The constable arrested both of these fellows on the same trip. Is the constable entitled to mileage in each case? I have had before me what purported to be a holding made by the Bureau of Accounting to the effect that the constable is entitled to mileage upon each warrant. Our county auditor is not entirely satisfied with that construction. Will you kindly advise me?"

Parts of Section 3347, General Code, pertinent to your inquiry are as follows :

"For services actually rendered and expenses incurred, regularly elected and qualified constables shall be entitled to receive the following fees and expenses, to be taxed as costs and collected from the judgment debtor, except as otherwise provided by law; serving and making return of each of the following orders or writs, for each defendant named therein including copies to complete service, if required by law, one dollar; viz., search warrant, warrant to arrest, * * * mileage for the distance actually and necessarily traveled in serving and returning any of the preceding writs, orders and notices, first mile fifty cents and each additional mile, fifteen cents; * * * "

While it appears from a reading of Section 3347 of the General Code that a constable is entitled to mileage for serving and making returns of processes of the court for each person named therein, yet the mileage must be for the distance actually and necessarily travelled in serving and returning any process of the court.

In Bouvier, Volume 2, at page 2209, mileage is defined as follows :

"A compensation allowed by law to officers for their trouble and expenses in travelling on public business."

"Mileage" is defined in the Century Dictionary, as :

" * * * payment allowed to a public functionary for the expenses of travel in the discharge of his duties, according to the number of miles passed over. * * * " *Richardson vs. State*, 66 O. S., 108.

"Actual" is defined in Webster's New International Dictionary as follows :

"Existing in act or reality; really acted or acting or being; in fact; real; * * * "

Since mileage is a recompense to a constable for expenses incurred by him in the discharge of his duties, to hold that a constable was entitled to mileage where he serves two warrants at the same time, and serves both during the same journey would be to consider mileage the same as a fee. The statute fixes the fees that a constable is to receive for serving a warrant, and to allow separate mileage on each warrant served at the same time during the same journey, would be in effect to construe the statute so as to allow an additional fee.

It is stated in *Richardson vs. State ex rel.*, 19 O. C. C. 193, that :

"Fees allowed to public officers are matters of strict law depending upon the very purpose of the statute. They are not open to equitable construction by the courts nor to any discretionary action on the part of officials."

If a constable is authorized to charge separate mileage for each warrant where two or more warrants are served at the same time on the same trip, a constable who travels ten miles to serve a warrant and then serves another warrant on another person during the same journey would be allowed to claim expenses for travelling twenty miles. I do not believe that Section 3347 of the General Code, can be so construed. The Legislature has estimated the extent of the reimbursement and the mileage must be actually and not constructively earned.

It may be urged that if a constable is only entitled to mileage on one warrant, when he serves two during the same journey, it cannot be determined on which warrant the mileage should be allowed. Mileage attaches to either warrant, but not to both, and it is left to the discretion of the officer on which warrant he should claim mileage.

Specifically answering your inquiry, I am of the opinion that where a constable travels and serves two warrants at the same time, during the same journey, he is not entitled to charge separate mileage on each warrant, but only for the number of miles actually travelled in order to serve both warrants.

Respectfully,
GILBERT BETTMAN,
Attorney General.

503.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND GUSTAV HIRSCH, COLUMBUS, OHIO, FOR ELECTRICAL WORK FOR NEW WING TO LAUNDRY, INSTITUTION FOR FEEBLE-MINDED, ORIENT, OHIO, AT AN EXPENDITURE OF \$1,250.00—SURETY BOND EXECUTED BY THE GLOBE INDEMNITY COMPANY.

COLUMBUS, OHIO, June 11, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Superintendent of Public Works, for and on behalf of the Department of Public Welfare, and Gustav Hirsch, of Columbus, Ohio. This contract covers the construction and completion of electrical contract for new wing to laundry, Institution for Feeble-Minded, Orient, Ohio, and calls for an expenditure of one thousand two hundred and fifty dollars (\$1,250.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligation of the contract. There has also been submitted a contract bond upon which the Globe Indemnity Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the Workmen's Compensation Act have been complied with.

In this connection, it will be noted that the award was made prior to January 1, 1929, and that the original appropriation lapsed before such contract was approved by the Attorney General. However, it will be further noted that the 88th General Assembly, in Amended House Bill No. 203, reappropriated such funds and authorized