

4109.

JUSTICE OF PEACE—FEES AND COSTS FOLLOW TRANSFER OF CASE OF
MINOR TO JUVENILE COURT.

SYLLABUS:

When a justice of the peace, in accordance with the provisions of Section 1659, General Code, has transferred the case of a minor to the Juvenile Judge, fees and costs of the justice of the peace and his constable, originally made, are to follow the case for allowance and payment under Section 1682, General Code.

COLUMBUS, OHIO, April 2, 1935.

HON. FRANK A. ROBERTS, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR:—Your recent request for my opinion reads as follows:

“A cost bill for a Justice of the Peace and his Constable was submitted, together with a transcript of the Justice’s proceedings, to the Juvenile Court of this county under the provision of Section 1659 of the General Code of Ohio. Upon hearing in the Juvenile Court the defendant was found guilty of being a delinquent child and was committed to an institution.

The Justice of the Peace and his Constable are asking payment of their costs pursuant to Section 1682 of the General Code, citing 1915 O. A. G. 502. The syllabus of this opinion reads as follows:

‘A mayor has no jurisdiction to dispose of a case against a minor under eighteen years of age other than to transfer the case to the juvenile judge. Fees and costs originally made, are to follow the case for allowance and payment under section 1682, G. C.’

In following the history of Section 1682 I find that subsequent to the date of this opinion in 1915 the following language was added to the section by amendment:

‘ * * * except the fees of the court and the fees and expenses of the sheriff and his deputies * * * . ’

In view of this amendment I am asking your opinion as to whether or not the cost bill should be certified to by the Juvenile Judge.”

The jurisdiction of a Juvenile Court over a minor under arrest is determined by Section 1659, General Code, which reads as follows:

“When a minor under the age of eighteen years is arrested on and under any charge, complaint, affidavit, or indictment, whether for a felony or a misdemeanor, such child shall be taken directly before the juvenile judge; if the child is taken before a justice of the peace, judge of the police or municipal court or court of common pleas other than a juvenile court, it shall be the duty of such justice of the peace or such judge of the police or municipal court or court of common pleas to transfer the case to the juvenile judge exercising

the jurisdiction herein provided. The officers having such child in charge shall take it before such juvenile judge, who shall proceed to hear and dispose of the case in the same manner as if the child had been brought before the juvenile judge in the first instance. Upon such transfer or taking of child before such juvenile judge, all further proceedings upon or under the charge, complaint, information or indictment shall be discontinued in the court of said justice of the peace, police or municipal judge or judge of the court of common pleas other than a juvenile court, and the case against or relating to such child shall thenceforth be within the exclusive jurisdiction of such juvenile judge and shall be deemed to be upon a complaint filed in such juvenile court as fully as if the appearance of such child had been upon a complaint filed in and a citation or warrant of arrest originally issued out of and by such juvenile court."

You have referred to Section 1682, General Code, which reads as follows:

"Fees and costs in all such cases with such sums as are necessary for the incidental expenses of the court and its officers, and the expense of transportation of children to places to which they have been committed, except the fees of the court and the fees and expenses of the sheriff and his deputies, shall be paid from the county treasury upon specifically itemized vouchers, verified by oath and certified to by judge of the court."

Section 1682, General Code, *supra*, was enacted as a part of an Act of the General Assembly passed April 23, 1908; an Act "to regulate the treatment and control of dependent, neglected and delinquent children." (99 O. L. 192). On June 14, 1915 the then Attorney General rendered an opinion reported in Opinions of the Attorney General for 1915, Vol. II, page 1022, the headnote of which opinion is as follows:

"A mayor has no jurisdiction to dispose of a case against a minor under eighteen years of age other than to transfer the case to the juvenile judge. Fees and costs originally made, are to follow the case for allowance and payment under section 1682, G. C."

On February 4, 1920, Section 1682, General Code, *supra*, was amended to its present form (108 O. L. Pt. II, 1218), the only change in the section being that referred to in your letter which is as follows:

" * * * except the fees of the court and the fees and expenses of the sheriff and his deputies * * * . "

One year after the amendment of Section 1682, General Code, *supra*, the then Attorney General rendered an opinion reported in Opinions of the Attorney General for 1921, Vol. I, page 114, in which he quoted the provisions of Section 1682, *supra*, which reads now as then and held as stated in the syllabus:

1. Where delinquent juveniles are sentenced to the Boys' Industrial School or Girls' Industrial Home, the costs of the case and the expense of transporting said juveniles to the place to which they have been committed, are, pursuant to Sec. 1682, G. C., payable by the county and not the state.
2. There is no statutory authority permitting a justice of peace or mayor

to bind over a minor under the age of eighteen years to the court of common pleas to await the action of the grand jury, and no fees may be legally taxed or paid in connection with any attempt by such officers to bind over such persons. A mayor or justice of peace has no jurisdiction to dispose of a case against a minor under eighteen years of age other than to transfer the case to the juvenile judge. Fees and costs originally made, are to follow the case for allowance and payment under section 1682 G. C.

3. In cases arising under section 1654 G. C. and all other sections of the juvenile act, the entries and minutes made in the appearance docket of the juvenile court and the entries in the journal of that court of all orders, judgments and findings of the court, are the only 'record' required by law to be kept.—See section 1641 G. C."

In that opinion reference was made to the fact that there is no statutory authority permitting a justice of the peace to bind a minor under the age of eighteen years over to the Court of Common Pleas to await the action of the Grand Jury, and for this reason no fees may be legally taxed or paid in connection with any attempt by such officers to bind over such person. Section 1659, General Code, *supra*, however, makes it the mandatory duty of the justice of the peace, when a minor under the age of eighteen years is arrested, to transfer the case to the Juvenile Court.

In no other section of the General Code is there provision for the payment of fees to a justice of the peace in such a case and to hold that the amendment of Section 1682, General Code, *supra* denies the payment of such fees to the justice of the peace would be reading into the section something which is not there. I see no basis for reaching a conclusion contrary to that of my predecessor as contained in the 1921 opinion and accordingly I am of the opinion in specific answer to your inquiry that the cost bill of the justice of the peace and the constable should be certified to by the judge of the Juvenile Court.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4110.

DEPARTMENT OF HIGHWAYS—CONSTITUTIONALITY OF PROVISIONS
OF H. B. NO. 180 of 91st GENERAL ASSEMBLY DISCUSSED.

SYLLABUS:

The terms of House Bill No. 180 of the 91st General Assembly discussed with reference to their constitutionality.

COLUMBUS, OHIO, APRIL 2, 1935.

Hon. Floyd C. Kerns,
Secretary of Highways Committee,
House of Representatives,
Columbus, Ohio.

DEAR SIR:—I acknowledge receipt of the copy of resolution adopted by the High-