

2732.

APPROVAL, BONDS OF GEAUGA COUNTY, OHIO—\$18,360.00.

COLUMBUS, OHIO, May 24, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2733.

APPROVAL, BONDS OF ROSS COUNTY, OHIO—\$55,000.00.

COLUMBUS, OHIO, May 24, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2734.

APPROVAL, BONDS OF NELSONVILLE CITY SCHOOL DISTRICT,
ATHENS COUNTY, OHIO—\$3,600.00.

COLUMBUS, OHIO, May 24, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2735.

FEE—WHEN SECRETARY OF STATE AGENT FOR SERVICE OF PROC-
ESS IN CIVIL SUIT AGAINST NON-RESIDENT OPERATORS OR
OWNERS OF AUTOMOBILES—MAXIMUM FEE TWO DOLLARS.**SYLLABUS:***By virtue of Section 6308-3, General Code, the maximum fee required to be paid to the Secretary of State is two dollars even though there may be more than one party defendant in the action for whom the Secretary of State is made their agent for the service of process.*

COLUMBUS, OHIO, May 24, 1934.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

"Sections 6308-1, -2, -3, -4 and -5, General Code, enacted by the 90th General Assembly at its regular session, provides for service of process in civil suits on non-resident operators or non-resident owners of automobiles operated in the state of Ohio and makes the secretary of state their agent for the service of process.

Recently the Clerk of Court of Common Pleas of Hamilton County directed to the sheriff of Franklin County such process in an action brought in Hamilton County in which there were three party defendants, all non-resident operators or owners of motor vehicles operated within this state.

Your special attention is called to section 6308-3, which provides as follows:

"The officer serving such process upon the secretary of state shall pay to said secretary at the time of service a fee of two dollars which fee shall be taxed as costs in the case. The secretary of state shall keep a record of such process and the day and hour of the service thereof upon him."

Your opinion is respectfully requested as to whether or not the fee of two dollars provided in section 6308-3 paid to the secretary of state at the time of service would apply in cases where there are more than one defendant or whether a fee of two dollars is required to be paid to the secretary of state for every party defendant in the action."

Section 6308-1, General Code, provides:

"Any non-resident of this state, being the operator or owner of any motor vehicle, who shall accept the privilege extended by the laws of this state to non-resident operators and owners, of operating a motor vehicle, or of having the same operated, within the state of Ohio, or any resident of this state, being the licensed operator or owner of any motor vehicle under the laws of this state, who shall subsequently become a non-resident or shall conceal his whereabouts, shall, by such acceptance or licensure, as the case may be, and by the operation of such motor vehicle within the state of Ohio, make and constitute the secretary of state of the state of Ohio, his, her, or their agent for the service of process in any civil suit or proceeding instituted in the courts of the state of Ohio against such operator or owner of such motor vehicle, arising out of, or by reason of, any accident or collision occurring within the state in which such motor vehicle is involved."

Section 6308-2, General Code, which describes the procedure to be followed in the serving of process, reads:

"Such process shall be served, by the officer to whom the same shall be directed or by the sheriff of Franklin county, who may be deputized for such purposes by the officer to whom the service is directed, upon the secretary of state of the state of Ohio, by leaving at the office of said secretary, at least fifteen (15) days before the return day of such process, a true and attested copy thereof, and by sending to the defendant, by registered mail, postage prepaid, a like true and attested copy thereof, with an endorsement thereon of the service upon said secretary of state, addressed to such defendant at his last known address. The registered

mail return receipt of such defendant shall be attached to and made a part of the return of service of such process."

Section 6308-3, General Code, with reference to the fee to be paid to the Secretary of State, provides:

"The officer serving such process upon the secretary of state shall pay to said secretary at the time of service a fee of two dollars (\$2) which fee shall be taxed as costs in the case. The secretary of state shall keep a record of such process and the day and hour of the service thereof upon him."

These sections are in pari materia and it should be noted that by virtue of Section 6308-2, General Code, quoted supra, the officer to whom the process is directed or the sheriff of Franklin County if he is deputized by such officer so to do, serves a copy of the process on the Secretary of State as agent for the non-residents. The sheriff of Franklin County, if he is so deputized by the officer to whom the process is directed in a particular county, or the officer if he does not choose to deputize the Franklin County sheriff, sends to the defendant by "registered mail, postage prepaid, a like true and attested copy thereof, with an endorsement thereon of the service upon said secretary of state", and such duty of sending such process is not placed upon the Secretary of State.

By virtue of Section 6308-3, General Code, quoted supra, the only duty of the Secretary of State is accepting the service as agent of the non-residents, and to "keep a record of such process and the day and hour of the service thereof upon him." For such clerical duties, the General Assembly has set the arbitrary sum of two dollars as the fee chargeable by the Secretary of State and it is my opinion that by virtue of Section 6308-3, General Code, supra, where the process has to do with only one action, even though there may be more than one defendant to be so served, the maximum required to be paid to the Secretary of State is the fee of two dollars.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2736.

APPROVAL, SUPPLEMENTAL RESOLUTION FOR ROAD IMPROVEMENT IN LORAIN COUNTY, OHIO.

COLUMBUS, OHIO, May 24, 1934.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of May 22, 1934, submitting for my approval supplemental resolution covering extra work on Section "Elyria", S. H. 313, Lorain County, Ohio.