

1617.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN ASH-  
LAND COUNTY.

COLUMBUS, OHIO, January 23, 1928.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works,*  
*Columbus, Ohio.*

1618.

APPROVAL, BONDS OF CORNING VILLAGE SCHOOL DISTRICT, PERRY  
COUNTY, OHIO—\$77,000.00.

COLUMBUS, OHIO, January 24, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

1619.

APPROVAL, BONDS OF HOLLANDSBURG RURAL SCHOOL DISTRICT,  
DARKE COUNTY, OHIO—\$72,000.00.

COLUMBUS, OHIO, January 24, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

1620.

FEES—MUNICIPAL COURT—CHIEF OF POLICE AND POLICE OFFICERS  
OF MARION AND MANSFIELD—NOT ENTITLED TO FEES IN STATE  
CASES IN ADDITION TO SALARIES.

## SYLLABUS:

*The chief of police and other police officers of the cities of Marion and Mansfield  
are not entitled to receive and retain fees for services rendered in state cases tried in  
the Municipal Courts of such cities, in addition to their salaries.*

COLUMBUS, OHIO, January 24, 1928.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*GENTLEMEN:—This will acknowledge your letter dated January 19, 1928, which  
reads as follows:

"The third paragraph of Section 1579-798, G. C., relates to the duties of the clerk of the municipal court of Marion, Ohio, and reads:

'He shall collect all fines, costs and penalties. He shall be the receiver of all moneys payable into his office and on request shall pay them to persons entitled thereto. On the first business day of each calendar month he shall pay to the treasurer of the city of Marion to the credit of the municipal court fund, all moneys collected by his office for official services; and to the credit of the safety fund, all fines collected for violation of city ordinances.'

The third paragraph of Section 1579-1015, G. C., 112 O. L. 334, relates to the duties of the clerk of the municipal court of Mansfield, Ohio, and reads:

'He shall collect all fines, costs and penalties. He shall receive all moneys payable into his office and on request shall pay them to persons entitled thereto. On the first business day of each calendar month he shall pay to the treasurer of the city of Mansfield to the credit of the municipal court fund, all moneys collected by his office for official services; and to the credit of the general fund, all fines collected for violation of city ordinances.'

Question: Are the chiefs of police and other police officers of said cities entitled to receive fees in addition to their salaries in state cases tried in the municipal court when warrants are issued to them?"

Section 1579-798, General Code, as amended by the 87th General Assembly, (112 v. 182), reads in part as follows:

"There shall be a clerk of the municipal court appointed by the municipal judge to serve during his pleasure, \* \* \*. He shall collect all fines, costs and penalties. He shall be the receiver of all moneys payable into his office and on request shall pay them to persons entitled thereto. On the first business day of each calendar month he shall pay to the treasurer of the city of Marion to the credit of the municipal court fund, all moneys collected by his office for official services; and to the credit of the general fund, all fines collected for violation of city ordinances. He shall on the first day of each month in each year, pay to the county treasurer all fines collected for the violation of state laws. \* \* \* "

You will note that the language of Section 1579-798, supra, is the same as before its amendment except that now all fines collected for violation of city ordinances are paid to the credit of the general fund instead of to the credit of the safety fund.

Your attention is directed to Section 1579-800, General Code, which provides in part as follows:

" \* \* \* Every police officer of the city of Marion shall be ex-officio deputy bailiff of the municipal court and shall perform from time to time such duties in respect to cases within the jurisdiction of said court as may be required of them by said court or the clerk thereof."

and to that portion of Section 1579-801, General Code, which reads:

" \* \* \* In criminal proceedings all fees and costs shall be the same as now fixed in police courts of cities, provided, however, that the municipal court, in lieu of the aforesaid method of taxing costs, by rule of court may establish a schedule of fees and costs to be taxed in all actions and proceedings, in no case to exceed fees and costs provided for like actions and proceedings by general law."

By the terms of Section 1579-798, supra, the clerk shall collect all fines, costs and penalties. You will note that Section 1579-801, supra, provides that all fees and costs shall be the same as now fixed in police courts of cities unless by rule of court a different schedule of fees and costs is established, which schedule, however, may not exceed fees and costs provided in like actions and proceedings by general law.

This section of the General Code was construed in Opinion No. 239, dated March 26, 1927, addressed to you, the syllabus of which reads:

"By virtue of Section 1579-801, the municipal court of the city of Marion may, in its discretion, promulgate rules fixing a schedule of fees and costs to be taxed in prosecutions for minor traffic violations, and a different schedule for prosecutions for misdemeanors of a more serious nature, provided such rules do not fix the amount of such fees and costs to exceed that provided for like actions and proceedings by general law, including Section 3005, General Code."

In this connection your attention is directed to Section 4581, General Code, which relates to fees in police courts of cities and provides in part as follows:

"The fees of the police clerk and judge shall be the same as those allowed justices of the peace, and the fees of the marshal, chief of police, or other police officer of the municipality serving the writs or process of the court, shall be the same as those allowed constables. \* \* \*"

It must be borne in mind that Sections 1579-801 and 4581, supra, have regard to *how much* the fees shall be and not *to whom* or *where* such fees shall be paid.

No provision of the act relating to the municipal court of Marion, Ohio, provides that the chief of police or other police officers are entitled to fees taxed in state cases tried in such court. It is a fundamental rule of law that neither fees nor compensation for services rendered by the public officers can be allowed unless provision is made therefor by statute. Laws providing for compensation for services are strictly construed and such compensation can be allowed only where clearly so expressed.

As provided by Section 1579-798, supra, the clerk shall collect all *fines, costs and penalties*.

Your attention is directed to the case of *State ex rel. Commissioners of Franklin County vs. Guilbert, Auditor*, 77 O. S. 333, wherein, on page 338, the court used the following language:

"Costs, in the sense the word is generally used in this state, may be defined as being the statutory fees to which officers, witnesses, jurors and others are entitled for their services in an action or prosecution and which the statutes authorize to be taxed and included in the judgment or sentence."

Section 1579-798, supra, governs the distribution of such "costs" by the provision thereof which reads:

"On the first business day of each calendar month he (the clerk) shall pay to the treasurer of the city of Marion to the credit of municipal court fund, *all monies collected by his office for official services.*" (Italics the writer's.)

It is my opinion that this provision is determinative of the question you present with regard to the municipal court of Marion, Ohio. In other words, it becomes the

duty of the clerk of the municipal court of Marion, Ohio, on the first day of each calendar month, to pay to the treasurer of the city of Marion to the credit of the Municipal Court Fund, all monies collected by such clerk for official services. Such monies would necessarily include the statutory fees taxed as costs in the several cases in question which the statute authorize to be taxed and included in the judgment or sentence imposed in such cases. The language of Section 1579-798, supra, viz., "He (the clerk) shall be the receiver of all moneys payable into his office and on request shall pay them to persons entitled thereto" has no application to the question that you present, for the reason that as pointed out above there is no statute providing that police officers shall be "entitled" to fees in state cases. Such language refers to monies paid on judgments, on execution, witness fees in civil actions and other cases where a person is entitled under the law to monies received by the clerk.

Summarizing and specifically answering that part of your question which refers to the municipal court of Marion, Ohio, it is my opinion that the chief of police and other police officers are not entitled to receive and retain fees in addition to their salaries in state cases tried in such municipal court.

In considering that phase of your inquiry which relates to the municipal court of Mansfield, Ohio, your attention is directed to Section 1579-1015, General Code, (112 v. 323, 333), which, in so far as pertinent, provides:

"There shall be a clerk of the municipal court appointed by the municipal judge to serve during his pleasure \* \* \* . He shall collect all fines, costs and penalties. He shall receive all moneys payable into his office and on request shall pay them to persons entitled thereto. On the first business day of each calendar month he shall pay to the treasurer of the city of Mansfield to the credit of the municipal court fund, all moneys collected by his office for official services; and to the credit of the general fund, all fines collected for violation of city ordinances. He shall on the first day of each month in each year, pay to the county treasurer all fines collected for the violation of state laws, except when otherwise provided by law. \* \* \* "

Section 1579-1017, General Code, provides in part as follows:

" \* \* \* Every police officer of the city of Mansfield shall be ex-officio deputy bailiff of the municipal court and shall perform from time to time such duties in respect to cases within the jurisdiction of said court as may be required of them by said court to the clerk thereof."

Section 1579-1018, General Code, provides in part as follows:

" \* \* \* In criminal proceedings all fees and costs shall be the same as now fixed in police courts of cities, provided, however, that the municipal court, in lieu of the aforesaid methods of taxing costs, by rule of court may establish a schedule of fees and costs to be taxed in all actions and proceedings, in no case to exceed fees and costs provided for like actions and proceedings by general law."

You will note that the provisions of the act providing for the establishment of the municipal court of Mansfield, Ohio, supra, are practically identical with the language of the sections relating to the municipal court of Marion, Ohio. It necessarily follows that the conclusions reached with regard to the municipal court of Marion, Ohio, would apply with equal force to that portion of your question which relates to the municipal court of Mansfield, Ohio.

Specifically answering your question in regard to the municipal court of Mansfield, Ohio, it is my opinion that the chief of police and other police officers of the city of Mansfield are not entitled to receive and retain fees in addition to their salaries in state cases tried in such municipal court.

I deem it unnecessary to comment upon the former opinions of this office to which you refer for the reason that each municipal court is governed by the particular act by which it was created and the other statutes relating thereto.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*

1621.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE FRITZ-RUMER-COOKE COMPANY, COLUMBUS, OHIO, FOR THE CONSTRUCTION OF A COAL STORAGE BIN, OHIO STATE UNIVERSITY, COLUMBUS, OHIO, AT AN EXPENDITURE OF \$12,862.50—SURETY BOND EXECUTED BY THE INDEMNITY INSURANCE COMPANY OF NORTH AMERICA.

COLUMBUS, OHIO, January 24, 1928.

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 Department of Public Works, for and on behalf of the board of trustees of the Ohio State University, and The Fritz-Rumer-Cooke Company, of Columbus, Ohio. This contract covers the construction and completion of a coal storage bin on the campus of Ohio State University, Columbus, Ohio, and calls for an expenditure of twelve thousand, eight hundred and sixty-two and 50/100 dollars (\$12,862.50).

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 obligations of the contract. You have also submitted a certificate from the Controlling Board, signed by the secretary thereof, that in accordance with Section 12 of House Bill No. 502, 87th General Assembly, said board has properly consented to and approved the expenditure of the monies appropriated by the 87th General Assembly for the purpose covered by this contract. In addition, you have submitted a contract bond upon which the Indemnity Insurance Company of North America 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 have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

EDWARD C. TURNER,

*Attorney General*