

consider and treat such territory as a single parcel of land, and the sum so assessed shall be apportioned to all the lots and lands within the municipality or the benefited portion, by the county auditor according to the valuation of the separate parcels therein for taxation."

It will be noted that under sections 6469 and 6470 that the method of procedure was to assess the cost of construction of any improvement under this chapter according to the benefits derived. The latter section provided that when the council of a municipal corporation, board of education or trustees of a state, county, township or municipal institution was a petitioner for an improvement, or was named and notified as one of the parties affected thereby, that the portion of the improvement within such municipality could be assessed against the lands situated in such municipality as a whole, and that sum so assessed against such property could be apportioned by the county auditor according to the valuation of a separate parcel thereof as listed for taxation. This provides for two methods of assessing the cost of such improvement. The cost could be assessed according to the benefits derived by each separate property holder or could be assessed against the municipality as a whole, and assessed by the auditor against the individual land holder according to the value on the tax duplicate without regard to benefits derived.

The amendments in 110 O. L., page 161 eliminated the method of assessing within a municipality according to the value of the property upon the tax duplicate.

It is, therefore, my opinion that sections 6454, 6455, and 6484 provide a method of levying assessments within a municipality for single county ditches.

Respectfully,

C. C. CRABBE,
Attorney General.

2430.

ALLOWANCE TO JUSTICES—SECTION 3019 G. C. CONSTRUED

SYLLABUS:

1. *By the provisions of section 3019, General Code, the county commissioners may make the allowance to justices, provided therein, at their first meeting in January or at a later meeting.*

2. *Section 3019, General Code, does not prohibit the allowance or payment of more than one hundred dollars during any one year if the excess has been earned by the officer in some previous year or years, during which no allowance, or one below the statutory limit, was made, but merely prevents an officer from being allowed more than one hundred dollars for fees taxed any one year.*

3. *There is no statutory provision, other than section 3019, General Code, whereby a justice can get an allowance for "lost fees" in criminal cases instituted by a sheriff or county prosecutor.*

COLUMBUS, OHIO, May 1, 1925.

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

GENTLEMEN:—On April 23rd you requested my opinion concerning interpretation of section 3019, General Code, asking three questions as follows:

1. Does this section preclude the county commissioners from making an allowance at any other time, except at the first meeting in January?

2. Does this section preclude the county commissioners from making allowances of more than \$100.00 in any one year, or does it merely prevent them from allowing the justice more than \$100.00 for services rendered by him in any one year?

3. Is this the only section to which a Justice of the Peace may resort in order to recover fees in cases instituted by a county prosecutor or the Sheriff "wherein the state fails"?

Section 3019, General Code, reads:

"In felonies wherein the state fails, and in misdemeanors wherein the defendant proves insolvent, the county commissioners, at the first meeting in January, shall make an allowance to justices of the peace and constables, in the place of fees, but in no year shall the aggregate allowance to such officer exceed the fees legally taxed to him in such causes, nor in any calendar year shall the aggregate amount allowed such officer and his successor, if any, exceed one hundred dollars. If there be a successor, said amount shall be prorated on the basis of lost fees."

Before amendment in 108 Ohio Laws, Pt. 2, page 1203, it read as follows:

"In felonies wherein the state fails, and in misdemeanors wherein the defendant proves insolvent, the county commissioners, at any regular session, may make an allowance to any such officers in place of fees, but in any year the aggregate allowances to such officer shall not exceed the fees legally taxed to him in such causes, nor in any year shall the aggregate amount allowed an officer exceed one hundred dollars."

You will note several changes in this section. As it now reads, it is *mandatory* that the commissioners make the allowance provided.

The time of making this allowance has been changed so that it cannot now be made before the *first meeting in January* for the year immediately previous to said January meeting.

It has been the custom of justices to put in claims from week to week or month to month, and it was to stop such practices that section 3019 was amended, rather than to compel the allowance to be made only at the first meeting of the commissioners in January. In other words, to have their full year's claim allowed at one time.

As it now reads, the justice's claim for allowance for lost fees for a full calendar year must be passed on by the commissioners at one time, to wit, at their first meeting in January, or a subsequent meeting.

It is my opinion, therefore, in answer to your first question, that the allowance provided for justices by section 3019, General Code, can be made by the county commissioners at their first meeting in January or a subsequent meeting, but the justice's claim shall be for a full calendar year.

Your second question has been heretofore answered in Opinions of the Attorney-General for 1918, Vol. II, p. 1683, the syllabus of which reads as follows:

"Section 3019 G. C. does not aim to prohibit the allowance or payment of more than \$100.00 during any one year if the excess has been earned by the officer in some previous year or years, during which no

allowance, or one below the statutory limit, was made, but merely prevents an officer from being allowed more than \$100.00 for services during any one year."

There is no statutory provision, other than section 3019, General Code, whereby a justice can collect lost fees in criminal cases instituted by a sheriff or county prosecutor.

Respectfully,
C. C. CRABBE,
Attorney General.

2431.

APPROVAL, BONDS OF LOGAN COUNTY, \$15,000.00

COLUMBUS, OHIO, May 2, 1925.

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

2432.

APPROVAL, FINAL RESOLUTIONS, ROAD IMPROVEMENTS IN RICHLAND, COLUMBIANA AND WASHINGTON COUNTIES.

COLUMBUS, OHIO, May 2, 1925.

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

2433.

GASOLINE TAX LAW CONSTRUED—STATE AND POLITICAL SUBDIVISIONS NOT EXEMPTED FROM PROVISIONS OF ACT.

SYLLABUS:

1. *In the event the state or its political subdivisions produces, refines, prepares, distills, manufactures or compounds motor vehicle fuel as defined in House Bill No. 44, or imports the same into the state for its own use, the state and such political subdivision is not required to pay the tax of two cents per gallon levied and imposed by section 2 of said act.*

2. *There is no provision in said act for reimbursement of the state or its political subdivisions for the amount of the tax assessed and paid by the dealer in the event the state or its political subdivisions purchase motor vehicle fuel from a dealer, unless such fuels are used for other purposes than the propulsion of motor*