

ties take them to all parts of the county, and in traveling about they are, of course, under an expense. There would seem to be little doubt that it is to such expenses as these that the sentence in question refers. Perhaps also the statute is broad enough to cover the expenses of a deputy surveyor incurred in a trip to Columbus if such trip is made at the request of the state highway commissioner in connection with a specific road improvement. (See Opinion November 3, 1917, Opinions of Attorney-General, 1917, Vol. III, page 2017). However, this last matter is mentioned only for purposes of illustration, and is not here passed upon. It is sufficient to say that we are not at liberty to put any broader construction upon the terms of section 2786 than fairly represents the intent of the legislature.

Under these circumstances, and in view of the fact that above quoted section 1185-1 mentions county surveyors only, the conclusion is inevitable that attendance at the meeting in question is not such an activity of the deputy county surveyors as would come within the performance of their official duties. This being true, there is no legal basis afforded the county commissioners for the allowance of such expenses.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*

1141.

AGRICULTURE—PENALTIES RECOVERED ON FORFEITED RECOGNIZANCES IN PROSECUTIONS BEGUN BY SECRETARY OF AGRICULTURE NOT SUCH MONIES AS ARE REQUIRED TO BE PAID TO SAID SECRETARY UNDER PROVISIONS OF SECTION 1177-14 G. C.

*Penalties recovered on forfeited recognizances in prosecutions begun or caused to be begun by the secretary of agriculture are not such monies as are required to be paid to said secretary under the provisions of section 1177-14 G. C.*

COLUMBUS, OHIO, April 9, 1920.

HON. A. V. DONAHEY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of the letter of recent date of J. P. Brennan, examiner for your department, requesting the opinion of this department, as follows:

“Section 1177-14 provides as follows:

‘All fines, fees and costs collected under prosecutions begun, or caused to be begun, by the secretary of agriculture, shall be paid by the court to the secretary of agriculture within thirty days after collection, unless error proceedings have been properly begun and prosecuted and in case the judgment of the justice of the peace is sustained the fine shall be paid within thirty days after such judgment or affirmance and by the secretary paid into the state treasury to the credit of the general revenue fund.’

I desire an opinion as to what disposition should be made by courts of the money recovered on forfeited bonds in cases brought or caused to be brought by the secretary of agriculture for violation of Ohio food, dairy and drug laws, also sanitary inspection, weights and measures, narcotic and cold storage laws.

Allow me to submit an example of such cases. On August 22, 1917, a representative of the board of agriculture, dairy and food division, filed

an affidavit in the police court of Akron, Ohio, charging George Wing and others with a violation of law under section 12679 General Code. A cash bond of \$50.00 was provided in each case and in not less than nine different cases. The record in these cases so far as I am able to determine shows that said bonds were forfeited, and no returns made to the secretary of agriculture for any part of said forfeiture."

The answer to your question necessarily depends upon the interpretation given to the word "fine" as used in the statute which you quote and the word "penalty" as used in the statutes relating to forfeited recognizances. The following definition has been given for the word "fine":

"A fine is a pecuniary punishment imposed by a lawful tribunal upon a person convicted of a crime or misdemeanor."

19 Cyc. 544.

It will be observed that a fine implies the guilt of the accused while there is no such presumption in the case of a forfeited recognizance. A recognizance is a bond given for the appearance of the accused and it will be observed that when the accused fails to appear this does not in any degree determine his guilt. It will further be observed that under such circumstances it will be the duty of the local authorities to take further measures to apprehend and bring to trial the accused. Such a proceeding necessarily would incur further expense which the county may be required to pay.

It has been held:

"While a fine is always a penalty a penalty is not always a fine."

Poindexter vs. State, 193 SW, 126.

While a penalty in the broad sense includes a fine, it will be observed that this word is frequently used in a very different sense. For instance, this term is frequently used in connection with bonds. The penalty of a bond as ordinarily understood means the amount recoverable thereon. A recognizance is a bond arising from a contractual obligation and the penalty recoverable thereon as referred to in the statutes has reference to the amount that may be recovered and does not imply a fine or moneys exacted for a punishment for any crime.

You are further referred to section 2916 G. C. which relates to the duties of the prosecuting attorney. Among other things this section requires the prosecuting attorney to "pay to the county treasurer all moneys belonging to the state or county which come into his possession as fines, forfeitures, costs or otherwise." There are no other provisions indicating any other disposition of the funds recovered upon a forfeited recognizance.

In the case of United States vs. Fanjul, 25 Fed. Case No. 15069, it was held:

"Money paid on a forfeited recognizance is not a fine, although the alleged crime was one which might have required the imposition of a fine if defendant had appeared and had been convicted; and consequently no part of such money belongs to the informer who would have been entitled to a share of the fine."

In view of the foregoing it is not believed that moneys collected on forfeited recognizances are payable to the secretary of agriculture under the provisions of 1177-14.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*