

3295.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND BOWLING GREEN STATE NORMAL SCHOOL AND CLAGUE & STROHL, OF BOWLING GREEN, OHIO, COVERING CONSTRUCTION AND COMPLETION OF GENERAL CONTRACT FOR WAYNE STREET PAVING, BOWLING GREEN STATE NORMAL SCHOOL, BOWLING GREEN, OHIO, AT EXPENDITURE OF \$8,183.13. SURETY BOND EXECUTED BY THE OHIO CASUALTY INSURANCE COMPANY.

COLUMBUS, OHIO, April 24, 1926.

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

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Highways and Public Works, for and on behalf of the Board of Trustees of Bowling Green State Normal School, and Clague & Strohl, of Bowling Green, Ohio. This contract covers the construction and completion of the general contract for Wayne Street paving, Bowling Green State Normal School, Bowling Green, Ohio, and calls for an expenditure of \$8,183.13.

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. There has further been submitted a contract bond upon which The Ohio Casualty Insurance Company 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,
C. C. CRABBE,
Attorney General.

3296.

AUTHORITY OF VILLAGE COUNCIL TO FIX COMPENSATION OF MARSHAL.

SYLLABUS:

The council of a village cannot fix the compensation of its marshal as the amount equal to the costs assessed in his favor in criminal cases and not paid by the defendants.

COLUMBUS, OHIO, April 26, 1926.

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

GENTLEMEN:—On March 18th I received the following letter from you:

“Section 4219 G. C. provides that council must fix the compensation of all officers and employes in the village government. Section 4270 G. C. provides that council by ordinance may authorize the mayor and marshal to

retain their fees in addition to their salaries.

"Question: May the council of a village by ordinance legally provide for the payment to a marshal, out of the village treasury, of an amount equal to the costs assessed in favor of such marshal in a criminal proceeding before the mayor and which costs were not paid by the defendant?"

By section 4384 G. C. the office of marshal is created and is an elective office with a fixed term.

Section 4219 G. C. says the council shall fix the compensation of all officers and that the compensation so *fixed* shall not be increased or diminished during the term for which any *officer is elected* or appointed.

Section 4270 G. C. says the council may authorize the marshal to retain his fees *in addition to his salary* and the Supreme Court has held that in state cases he can keep his fees regardless of this section and that the council cannot control fees in state cases.

What the costs will be in criminal cases before a mayor is indefinite and uncertain and of course, the total amount for one year cannot be *fixed* before the marshal takes office.

The word "fixed" according to Funk and Wagnalls Dictionary means:

"1st. Of an established, unchanging or permanent character, settled, lasting, stable."

In 34 Cyc. 1836 we find that "salary is the periodical *compensation* of men in official and in some other positions" and that it depends "on the time and not the amount of services rendered."

This appears to be the sense in which the term is used in Sec. 4219 G. C., and in the case at hand the compensation is for an officer with a definite term.

The marshal's services to the village are not confined to the arrests he may make but he is the peace officer of the village and it is his time that the council fixes his compensation for and not the arrests he may make.

Sec. 4270 G. C. provides for giving him his fees *in addition* to the compensation fixed by council for him.

The word "fixed," as used in section 4219 G. C. means a definite amount and not something left to chance nor does it mean a manner of arriving at an amount at the end of a period.

If this was a fee office only, it would not have been necessary to fix a compensation at all as other sections would fix his fees and an ordinance would permit him to retain them, when collected, in ordinance cases.

The council certainly cannot "fix" a compensation and leave a speculation as to the amount, as would be the case if they attempted to fix it at the amount of fees earned and not paid by the defendant.

An office is not a contractual relation and the word "salary" as used in section 4270 G. C. would indicate that "compensation" meant "salary" in section 4219 G. C.

This compensation should be fixed so it could be provided for by the budget.

The office of constable is an example of a fee office as no provision is made for his receiving a fixed compensation or salary, as there is for the office of marshal.

A man running for the office of marshal is entitled to know what he will receive as a definite, fixed and certain compensation.

It is my opinion that the council of a village cannot fix the compensation of its marshal as the amount equal to the costs assessed in his favor in criminal cases and not paid by the defendants.

Respectfully,
C. C. CRABBE,
Attorney General.