

3925.

CITY SOLICITOR—NOT ENTITLED TO ADDITIONAL COMPENSATION
FOR SETTLEMENT OF CLAIMS AGAINST SURETY COMPANIES.

SYLLABUS:

A city solicitor may not be compensated for legal services rendered in the settlement of claims against the sureties of a city board of education depository.

COLUMBUS, OHIO, January 8, 1932.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication which reads:

“We are enclosing herewith a letter addressed to this department by A, City Solicitor of the city of X, in which he submits a question as to the right of the Board of Education of X city district to make an allowance to him for services in connection with the recovery of \$175,000.00 from surety companies.

“You are respectfully requested to furnish this department your written opinion upon the question submitted in this letter.”

The attached letter states in part:

“When the board’s depository bank in X closed * * *, the board had on deposit the sum of * * *, a part of which was secured by surety bonds issued by several companies. Claims were immediately perfected by the solicitor against all of these companies and ordinarily collections would have been effected without much complication. However, owing to the general disturbance in financial institutions throughout the nation all of the surety companies involved were found to be unable or unwilling to make immediate payment. Emergency action was necessary in order to procure funds to pay maturing bonds and pay-rolls and the solicitor was therefore obliged to visit the home office of one of the companies at * * * and by sundry other methods arrange lengthy conferences with surety company officials, expending a large amount of the time of his office in connection therewith with result that with one exception the cash has been received in satisfaction of claims. The theory was that urgent personal action would be far more effective than the institution of suit, and while the amount of effort expended has been much greater than that which would have been true if suit had been filed, the results have fully justified the course of procedure. * * *”

The general salary of a city solicitor is provided for in Section 4213, General Code, which authorizes council to fix by ordinance or resolution salaries and compensation of all officers.

Section 4307, General Code, however, authorizes a council of a municipality to prescribe compensation for the city solicitor in connection with his duties as police prosecutor, and the county commissioners under said section may allow additional compensation.

Section 4761, General Code, provides that the prosecuting attorney shall be

the legal advisor of all boards of education in the county except in city school districts; this section further provides:

"* * * In city school districts, the city solicitor shall be the legal adviser and attorney for the board of education thereof, and shall perform the same services for such board as herein required of the prosecuting attorney for other boards of education in the county."

Section 4762, General Code, reads:

"The duties prescribed by the preceding section shall devolve upon any official serving in a capacity similar to that of prosecuting attorney or city solicitor for the territory wherein a school district is situated, regardless of his official designation. No prosecuting attorney, city solicitor or other official acting in a similar capacity shall be a member of the board of education. No compensation in addition to such officer's regular salary shall be allowed for such services."

Your inquiry resolves itself into a determination as to whether or not services rendered by a city attorney in connection with the settlement of the bonds above mentioned are included in the services which he is required to render the board of education of a city school district as such city solicitor.

It follows that if such services are included within the duties of that office, no additional compensation could be allowed therefor since the compensation of the office has already been fixed.

As has been stated, Section 4761, General Code, requires the city solicitor to be the legal adviser and attorney of the board of education of a city school district.

In the case of *State ex rel. vs. Stafford*, 8 O. N. P. 470, the court in discussing statutes relative to the duties of a prosecuting attorney, at page 472, stated:

"The words, legally advise, should be interpreted to mean in these statutes what it is usually held to mean. In its common use as well as in legal proceedings it simply means counsel, advice, to inform, to acquaint, quite different as is well understood by the legal profession from a pleader in court or the defense of a cause of action before a judicial tribunal."

It is clear from the foregoing that the services rendered in the situation concerning which you inquire were not in the nature of the giving of advice or information and so would not be included within the duties of a city solicitor as "the legal adviser" of the school board.

As has been noted, the above section requires the city solicitor to be the attorney of the board of education.

The term "attorney" standing alone does not necessarily imply an agency relation for the transaction of legal business, although used ordinarily to designate an attorney-at-law. See 4 Ohio Jurisprudence, page 419. But in the instant case, there is no doubt that the word "attorney" is used to designate an attorney-at-law.

The principal duties of an attorney-at-law, as stated in Bouvier's Law Dic-

tionary are—"to be true to the court and to his clients; to manage the business of his clients with care, skill and integrity." °

It is common knowledge that when the services of an attorney-at-law are engaged in a matter, generally the first action of such attorney, after investigation of the legal and equitable rights involved, is to propose a settlement in part or in full in order to avoid the costs of court litigation, and if such settlement is not forthcoming, he proceeds to a judicial determination of the matter.

Since the city solicitor is required to appear for the board of education in all civil actions brought by it, the proper procedure for him to have followed as its attorney in the instant case, and which procedure he did follow, was to consult with the surety companies, with a view to effecting a settlement or as a preliminary to court action. Such services, therefore, would be included in the ordinary duties of a city solicitor as attorney for such board of education, and consequently compensation for such services in addition to that fixed according to law could not and cannot be allowed. (See Section 4762, General Code, above quoted.)

In view of the foregoing, and in specific answer to your inquiry, I am of the opinion that a city solicitor may not be compensated for legal services rendered in the settlement of claims against the sureties of a city board of education depository.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3926.

APPROVAL, CONTRACTS FOR ROAD IMPROVEMENTS IN SHELBY,
LORAIN, HANCOCK, LICKING AND RICHLAND COUNTIES.

COLUMBUS, OHIO, January 8, 1932.

Hon. O. W. Merrell, Director of Highways, Columbus, Ohio.

3927.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND
ROBERT J. MARKARIUS OF DAYTON, OHIO, FOR PLUMBING FOR
KITCHEN, DINING ROOM AND STOREROOM BUILDING AT OHIO
SOLDIERS' AND SAILORS' ORPHANS' HOME, XENIA, OHIO, AT AN
EXPENDITURES OF \$6,060.00. SURETY BOND EXECUTED BY THE
FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

COLUMBUS, OHIO, January 8, 1932.

HON. T. S. BRINDLE, Superintendent of Public Works, Columbus, Ohio.

DEAR SIR:—Your immediate predecessor, Albert T. Connor, submitted to this office for my approval a contract between the State of Ohio, acting by and through the Department of Public Works, for and on behalf of the Board of Trustees of the Ohio Soldiers' and Sailors' Orphans' Home, Xenia, Ohio, and