

arising from fines collected and bonds forfeited by persons apprehended or arrested by state highway patrolmen for violation of state traffic laws shall continue to be distributed under the provisions of Section 1181-5, supra. All other fines, etc., collected for violations of state traffic laws, however, will be disbursed as provided in Section 3056-3, supra.

I have not discussed the provisions of Sections 3056-2, 3056-4 and 3058 of Amended Senate Bill No. 46, because the language contained in each is very clear and requires no interpretation or construction.

Respectfully

THOMAS J. HERBERT,
Attorney General.

1064.

DITCH, JOINT COUNTY—CONSTRUCTION—WHEN DEPOSIT SUCCESSFUL BIDDER FORFEITED—WHERE COUNTY COMMISSIONERS PERFORM ADDITIONAL SERVICES TO OBTAIN NEW BIDDER—CONTRACT—HOW PER DIEM COMPENSATION GOVERNED—WHERE DUTIES PERFORMED IN FOREIGN COUNTY—ACTUAL EXPENSES MAY BE PAID—SECTIONS 6479, 6502, G. C.

SYLLABUS:

1. *When the deposit of a successful bidder for the construction of a joint county ditch is forfeited under the provisions of Section 6479, General Code, and the members of the joint board of county commissioners in charge of said improvement are required to perform additional services to obtain a new bidder with whom a contract may be made, the per diem compensation of such commissioners is governed by the four day limitation contained in Section 6502, General Code.*

2. *Such commissioners, however, may be paid the amount of their actual expenses incurred in the performance of their respective duties at places other than in their own county.*

COLUMBUS, OHIO, August 19, 1939.

HON. MARTIN E. HOEFFEL, *Prosecuting Attorney, Napoleon, Ohio.*

DEAR SIR: I am in receipt of your communication wherein you request my opinion on the following:

“If the deposit made by a contractor at the time of filing a sealed bid for construction of a joint county ditch is forfeited to the counties because the successful bidder failed to sign a contract and furnish bond, can the joint Board of County Commis-

sioners draw expenses and an extra day's compensation for services rendered at the resale of said ditch, when said Boards have already drawn four days' compensation on said ditch, or can said Boards be paid only for the expenses incurred other than the compensation fee?"

Your question is concerned with the compensation which may legally be paid to members of a joint board of county commissioners for services rendered in connection with the proposed construction of a joint county ditch.

Section 6502, General Code, contained in the chapter (Sections 6442 to 6508, inclusive, General Code), dealing with single county ditches, provides for payment of additional compensation to county commissioners for the performance of duties required of them under said chapter, as follows:

"In addition to the salary otherwise provided by law for county commissioners, each commissioner shall receive, for performing all duties required of him in this chapter, five dollars per day for each day actually engaged in work on an improvement as defined in this chapter, but not to exceed one hundred days in any one year, and not to exceed four days on any one improvement, and said compensation shall be charged as costs in the location and construction of the improvement and paid in the first instance out of the general ditch improvement fund of the county."

Section 6537, General Code, in the chapter (Sections 6535-1 and 6545, inclusive, General Code) on joint county ditches, provides as follows:

"Save and except as is otherwise provided in this chapter, the joint board of county commissioners may do and perform all the things that the commissioners may do in a single county improvement, and shall be governed by and be subject to all the provisions of the chapter relating to single county ditches in so far as applicable. The proceedings for a joint county improvement shall proceed before said joint board the same as if said joint board were a board of county commissioners representing a county that included all the territory of all the counties represented by the commissioners on said joint board. All rights of appeal, and all other rights or remedies as provided in the chapter relating to single county improvements shall apply to joint county improvements. All officers doing any acts or making any findings for or against such improvement shall perform all the duties required of them pursuant to the provisions of chapter one of this title. All owners affected by the proceedings for a joint

county improvement shall have all the rights and remedies given them in single county improvements. The proceedings in joint county improvements shall be the same as the proceedings in single county improvements, save and except as modified in this chapter."

A former Attorney General, in an opinion contained in Opinions of the Attorney General for 1924, Vol. I, page 58, considered the question of whether or not county commissioners could be paid for duties performed in connection with the construction of a joint county ditch in the same manner as they are paid for services performed in a single county ditch proceeding. His conclusion, as evidenced by the syllabus of the opinion, was to the effect that:

"Under the provisions of section 6537 of the General Code, the provisions of section 6502 of the General Code, relating to the compensation of County Commissioners, have application to both single and joint county ditch improvements."

I am in accord with the reasoning contained in that opinion and am therefore of the view that members of a joint board of county commissioners may be paid for services rendered in connection with the construction of a joint county ditch in the manner provided and subject to the limitations in Section 6502, *supra*.

In addition to such per diem compensation, Section 6540, General Code, contained in the chapter on joint county ditches, allows members of a joint board of county commissioners their expenses incurred in connection with such improvement. Said section reads as follows:

"In the matter of an improvement under this chapter, there shall be included as a portion of the costs and expenses to be paid by the petitioners, if the petition be dismissed, or assessed as a part of the costs, if the petition be granted, the actual expenses of the members of the joint board of county commissioners for the performance of their duties at places other than in their own county; and such expenses shall be paid in the first instance, on the approval of the joint board out of the general ditch improvement fund of the county in which the petition is filed."

You now raise the question as to whether such allowances may be made to members of a joint board of county commissioners, who have already drawn four days' compensation in connection with the construction of a joint county ditch, when the deposit of the successful bidder has been forfeited and the commissioners are thereby required to perform

additional services to obtain a new bidder with whom a contract may be made.

Section 6479, General Code, makes provision for such forfeited deposits as follows :

“* * * The deposit of the successful bidder shall be held until the contract is signed and bond given, when it shall be returned. Should a bidder, after his bid is accepted, refuse or for ten days neglect to sign said contract or furnish said bond, the commissioners may declare such deposit forfeited, and shall so declare, unless for good cause shown further time be allowed to the bidder to comply therewith. Any action of the commissioners forfeiting the bidder's deposit shall be entered on their journal, and the forfeited sum shall be paid into the general ditch improvement fund.”

It will be noted that in such case no provision is made therein for further compensation to the joint board of county commissioners. That section merely requires the forfeited deposit to be paid into the general ditch improvement fund to be expended, it must be assumed, in a manner provided by law for the construction of the improvement.

In 32 O. Jur., at page 1011, we find the following pertinent observations in connection with the salary and compensation of public officers :

“It is well settled in Ohio that a public officer is not entitled to receive pay for services out of the public treasury unless there is some statute authorizing the same. In other words, compensation is not allowed by implication. Services performed for the public, where no provision is made by statute for payment, are regarded as a mere gratuity or as being compensated by the fees, privileges, and emoluments accruing to such officer in matters pertaining to his office. The fact that a duty is imposed upon a public officer will not be enough to charge the public with an obligation to pay for its performance, for the legislature may deem the duties imposed to be fully compensated by the privilege and other emoluments belonging to the office or by fees to be charged and collected for services connected with such duty or service and hence, provides no direct compensation therefor to be paid out of the public treasury.”

In the instant case there exists specific authority for paying each member of a joint board of county commissioners, the sum of \$5.00 per day for services rendered in connection with the construction of a joint county ditch. However, that authority limits such payment to four days on any one improvement. It must therefore be presumed that the Legis-

lature felt that \$20.00 per improvement was sufficient compensation and all services performed after four days were adequately compensated by such sum and the salary attaching to the office of county commissioner. The Legislature placed no limitation in Section 6540, *supra*, as to the amount of expenses for which members of a joint board of county commissioners might be reimbursed other than to provide that such reimbursement shall be only for the actual expenses of the members for the performance of their duties at places other than in their own county.

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that:

1. When the deposit of a successful bidder for the construction of a joint county ditch is forfeited under the provisions of Section 6479, *supra*, and the members of the joint board of county commissioners in charge of said improvement are required to perform additional services to obtain a new bidder with whom a contract may be made, the per diem compensation of such commissioners is governed by the four day limitation contained in Section 6502, *supra*.

2. Such commissioners, however, may be paid the amount of their actual expenses incurred in the performance of their respective duties at places other than in their own county.

Respectfully

THOMAS J. HERBERT,
Attorney General.

1065.

SCHOOL TERRITORY—TRANSFER—WHERE COURT ACTION
—FINDINGS OF COURT—JOURNAL ENTRY—DETERMINATIVE—FUNDS—ADMINISTRATIVE OFFICERS BOUND
BY FINAL ORDER—STATUS AS TO MODIFICATION.

SYLLABUS:

When proceedings are inaugurated to transfer school territory in accordance with the statutes relating thereto, and the matter is litigated by action in court begun either before or after the completion of the statutory steps for the transfer of territory, the findings of the court as shown by its final journal entry in the said action are determinative of all matters as they affect the parties involved, which were or might have been litigated incident to the transfer of the said territory including an equitable distribution of funds and indebtedness as between the districts involved in the said transfer, and administrative officers are bound by the final order of the court and are powerless to make distribution of funds or act in any respect otherwise than in strict accordance with the decree