

tion, to which the public is generally invited, is not engaged in the operation of a restaurant under the provisions of Sections 843 to 843-18 of the General Code.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

196.

ATTORNEY'S FEES—PREPARING TRANSCRIPT OF PROCEEDINGS  
WITH REFERENCE TO ISSUANCE OF TOWNSHIP BONDS FOR IM-  
PROVEMENT—HOW PAID.

SYLLABUS:

*Attorneys' fees covering the cost of preparing a transcript of proceedings with reference to the issuance of township bonds, may not be included in the cost of such improvement for which bonds are issued, and such fees may be paid only from the township fund as provided in Section 2917, General Code.*

COLUMBUS, OHIO, March 16, 1929.

HON. H. ALFRED DONITHEN, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your letter of recent date which is as follows:

“Under Section 3298-13, provision is made for the payment of a township road improvement which reads in part as follows:

‘The compensation, damages, costs and expense of the improvement shall be apportioned and paid in any one of the following methods.’

I should like to know, as prosecuting attorney of Marion County, Ohio, whether or not attorneys' fees for preparing a transcript, which is necessary for the purpose of selling the bonds to pay for said improvement, is such an expense or cost as may be included in the cost of said improvement to be assessed against the land owner under the provisions of this section. Marion county at the present time is constructing a great many township roads and this question has come up several times. Heretofore, township trustees have paid these attorneys fees out of the general funds but owing to the growth of this method of construction this matter of caring for attorneys fees has become a burden upon several of the boards.

If it is possible to include attorneys fees as cost of said road under this section, kindly advise.”

A board of township trustees may employ counsel other than the prosecuting attorney under the provisions of Section 2917, General Code. This section is as follows:

“The prosecuting attorney shall be the legal adviser of the county commissioners and all other county officers and county boards and any of them may require of him written opinions or instructions in matters connected with their official duties. He shall prosecute and defend all suits and actions which any such officer or board may direct or to which it is a party, and no county officer may employ other counsel or attorney at the expense of the county

except as provided in Section twenty-four hundred and twelve. He shall be the legal adviser for all township officers, and no such officer may employ other counsel or attorney except on the order of the township trustees duly entered upon their journal, in which the compensation to be paid for such legal service shall be fixed. Such compensation shall be paid from the township fund."

It is noted that specific provision is made as to how the compensation for such legal services shall be paid, namely, "from the township fund."

Boards of township trustees are authorized to issue bonds in anticipation of the collection of special assessments, and also in anticipation of the collection of taxes to pay the cost and expense of road improvements. Sections 3298-1, et seq., General Code. In this connection, it is a well established principle that "Acts authorizing the levy of taxes for certain purposes must be strictly followed and will not authorize the levy of taxes for other purposes. The levy of taxes for purposes not authorized by the Legislature will be void." 11 Cyc. 578.

There appears to be no inference in any of the sections granting authority to township trustees and governing their procedure in issuing township bonds, nor in the Uniform Bond Act, whereby attorneys' fees may be considered part of the cost and expense of an improvement. Section 5654-1, General Code, 112 O. L. 483, expressly provides that bonds "shall be issued in an amount not exceeding the full amount of the accepted bid by more than the estimated amount of such other items of cost as may be legally included in the total cost of such construction or improvement." Consequently, with the amount of the bond issue limited to the amount of the accepted bid, plus such estimated items of cost as may be legally included, irrespective of any other provisions, attorneys' fees could not be considered as such item of cost because such fees may not be estimated; it being provided in Section 2917, General Code, supra, that when counsel other than the prosecuting attorney is employed by a board of township trustees, the compensation of such attorney must be fixed at the time of his employment.

In further substantiation of the view that attorneys' fees are not such an item of cost as may be legally included in the total cost of such construction or improvement, it should be noted that the law expressly provides that the prosecuting attorney shall be the legal adviser of the board of township trustees and further provides for the employment of outside counsel in certain instances and the fund from which such attorney may be paid.

In the case of *Longworth vs. Cincinnati*, 34 O. S. 101, a question was considered somewhat similar to the one you present. The second branch of the syllabus is as follows:

"Where the surveying and engineering of such improvement were performed by the chief engineer of the city and his assistants, who were officers appointed for a definite period, at a fixed salary, which the law required to be paid out of the general fund of the city, the reasonable cost to the city, of such surveying and engineering, can not be ascertained and assessed upon the abutting property, as a necessary expenditure for the improvement."

I am, therefore, of the opinion that attorneys' fees covering the cost of preparing a transcript of proceedings with reference to the issuance of township bonds, may not be included in the cost of an improvement for which bonds are issued, and such fees may be paid only from the township fund as provided in Section 2917, General Code.

Respectfully,

GILBERT BETTMAN,  
Attorney General.