

Is this a legal appointment by reason of the fact that at the time I. C. filed his application he was a member of the board of education of the Village of Jacksonville?"

Section 7669, General Code, which is pertinent to your inquiry, reads in part as follows:

"The boards of education of two or more adjoining school districts, by a majority vote of the full membership of each board, may unite such districts for high school purposes. * * *"

Section 7670, General Code, reads:

"Any high school so established shall be under the management of a high school committee, consisting of two members of each of the boards creating such joint district, elected by a majority vote of such boards. Their membership of such committee shall be for the same term as their terms on the boards which they respectively represent. Such high school shall be free to all youth of school age within each district, subject to the rules and regulations adopted by the high school committee, in regard to the qualifications in scholarship requisite for admission, such rules and regulations to be of uniform operation throughout each district."

A subsequent communication from you discloses the fact that I. C. was not a member of the joint high school committee of Jacksonville and Trimble villages.

It appears from the foregoing that at the time of I. C.'s appointment as janitor he was not a member of any board of education and so the inhibitions of the various statutes, prohibiting a member of a board of education having directly or indirectly any financial interest in the contracts of such board, would not apply.

Assuming that the joint high school committee of Jacksonville and Trimble Villages subsequently followed the recommendation of the Athens County Board of Education and appointed I. C. janitor, I am of the opinion that such appointment would be valid.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3735.

APPROVAL, BONDS OF PAINESVILLE CITY SCHOOL DISTRICT, LAKE COUNTY, OHIO—\$20,000.00.

COLUMBUS, OHIO, November 6, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3736.

JURY FEES—NOT TAXABLE AS COSTS IN APPROPRIATION PROCEEDINGS FOR STATE HIGHWAY.

SYLLABUS:

Jury fees may not be taxed as part of the court costs in a proceeding to appropriate property for state highway purposes.

COLUMBUS, OHIO, November 6, 1931.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent request for my opinion, reading as follows:

"I enclose photostat copies of cost bill, Probate Court, Clermont County, Ohio, incurred in appropriating right of way for state highways. The proceeding was brought by the Director of Highways in which the costs were adjudged against the plaintiff.

The particular item to which I invite your attention is for jurors' fees \$157.38.

Question: In appropriation cases must the county pay the jurors fees, or, are the same a part of the court costs adjudged against the litigant losing the case?

We have many cases of this kind, and we wish an official ruling to determine the matter."

It is a fundamental principle of law in Ohio that the term "costs" relates only to those items which the statutes have provided shall be so taxed. 11 O. Jur. p. 10, Section 1. It follows that the litigants in a special proceeding for the appropriation of private property for the improvement of a state highway are liable for the payment of jury fees as part of the costs of a special proceeding only when the statutes governing such proceedings specifically so provide.

It is said in 11 O. Jur. 61, Section 55:

"Jury fees are not ordinarily treated as costs, and, in the absence of statute, are not taxable as part of the costs in civil proceedings, the reason being that, while individuals are benefited by the service rendered by jurors in civil cases, and the legislature has, for this reason, in some instances required the individual litigants to pay a part of the fees of jurors as costs, the service rendered by them is not solely a private service, but is in part for the public benefit; and provision is therefore made by statute (G. C. §3008), for the payment of the per diem and mileage of jurors out of the county treasury."

The author cites *State, ex rel. v. Commissioners of Meigs County*, 6 O. D. 240 (affirmed in 14 O. C. C. 26, 7 O. C. D. 351). It was held in that case as disclosed in the second, third, fourth and fifth branches of the headnotes:

"2. Every county, at its own expense, is required to furnish a courthouse, light and fuel, officers to maintain order and carry out the orders of the court, and a jury as provided by law.

3. The word 'cost' is of frequent occurrence in the statutes of Ohio but is not synonymous with 'expense.' Expense is costs when made so by statute.

4. The word 'costs' has a legal signification. It includes only those expenditures which are by law taxable and to be included in the judgment, and which denotes the expense which a person is entitled to recover by reason of his being a party to legal proceedings.

5. Jury fees are not costs, and shall not be taxed as part of the costs in any legal proceeding, civil or criminal."

See also *Equipment Co. v. Kaufman*, 13 N. P. (N. S.) 59; *Worther v. Ruehrwein*, 10 O. D. 116; *Castle v. Roach*, 8 N. P. 212; 11 O. D. 358; *State, ex rel. v. Coates*, 8 N. P. 682, 11 O. D. 670; *Cincinnati M. & L. Trac. Co. v. Felix*, 15 C. D. 393, 5 C. C. (N. S.) 270.

The law governing the taxing of costs in proceedings for the appropriation of private property for state highway purposes is contained in Section 1201-1, General Code, which reads, so far as pertinent, as follows:

"The probate court shall make a record of all proceedings before him and tax the costs in favor of the prevailing party and against the losing party. If there are several appellants in the same action and costs are adjudged against them, the court shall apportion the costs equitably among them."

Some confusion may arise in reference to this question by reason of the fact that it has been held that under Section 11089, General Code, relating exclusively to the appropriation of property by private corporations, jury fees were taxable as part of the court costs. *Railroad Co. v. County*, 71 O. S. 454.

The State, represented by the Director of Highways, in the appropriation of land to improve state highways, is not bound by the provisions of Title 3, Chapter 5, governing the appropriation of property by a private corporation. Section 11091, General Code, in said chapter, provides in part:

"The provisions of this chapter shall not apply to proceedings by state, county, township, district, or municipal authorities, to appropriate private property for public uses, or for roads or ditches. * * *"

In *Railroad Co. v. County*, 71 O. S. 454, supra, it was contended that Section 11089, General Code, was unconstitutional because it imposed a burden on private corporations in the appropriation of land greater than that borne by public authorities in acquiring private property for public purposes. As to this contention, the court said at page 458:

"This objection ignores the difference as to appropriation of land between a private railroad corporation and a public municipal corporation. One appropriates for a private purpose; the other for purposes affecting the public. We think the objection not well founded."

It was held in *Kraemer v. Board of Education*, 8 O. A. 428, that where a board of education has appropriated property for school purposes, there is no authority to tax jury fees as part of the court costs payable by the property owner. That decision is based on the case of *Railroad Co. v. County*, supra. See also *Hill v. Durr*, 47 W. L. B. 440; 1925 Opinions of Attorney General, 363; 1917 Opinions of Attorney General, Vol. 1, p. 204.

Based on the foregoing, I am of the opinion that jury fees may not be taxed as part of the court costs in a proceeding to appropriate property for state highway purposes.

Respectfully,
GILBERT BETTMAN,
Attorney General.