"institutions used exclusively for charitable purposes." In the 99 O. S. 185 in the case of State v. Fulton the court declares this change to be an enlarging of the former constitutional provision. Thus there has been a growing disposition by the constitution makers and the legislatures to exempt property used exclusively for charitable purposes. But the extent of the exemption from taxation of property so used is determined by the constitution itself. The constitution has prescribed a limit which is "institutions *used* exclusively for charitable purposes."

The property of the Marsh Foundation is not being *used* exclusively for charitable purposes, under the facts as set forth in your communication.

The real estate belonging to a charitable institution is exempt from taxation only when used for charitable purposes. (92 O. S. 252). The court in the case of Wilson, Auditor v. The Licking Aerie, 104 O. S. 137, speaking of property belonging to institutions of public charity says: "Such property can only be exempt under the constitution when used exclusively for charitable purposes."

There is no distinction made between real and personal property. The constitution says "institutions." The 104 O. S. 137 says "property". Section 5353 uses "property". Section 5353-1 reads: "Property, real, personal and mixed." Under the old statute as referred to in The Cincinnati College vs. State case the statute in one paragraph named buildings, etc., and another "money and credits." The court held that the *use* of the money as well as the *use* of the real estate determined whether or not it was exempt from taxation.

Moreover, it is the *use* of the property *now* and not what may be done in the future with the proceeds. In the Cincinnati case above mentioned the court declared "The law applies to the property as it finds it in *use*, and not to what may be done with its accumulations in the future." Though the property in the hands of the trustees of the Foundation is invested, and though the income therefrom accumulating is to be used eventually for charitable purposes, yet it is taxable until such time as it is so used.

We are therefore of the opinion that the property of the Marsh Foundation, real and personal, is taxable until such time as it is *used* exclusively for charitable purposes.

Respectfully,
C. C. CRABBE,
*Attorney General.*

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490.

COLUMBUS, OHIO, June 25, 1923.

VIOLATIONS OF CRABBE ACT MAY BE PROSECUTED BEFORE A MAYOR—NO FEE ALLOWED SHERIFF FOR AIDING POLICE OFFICER OF CITY—MAYOR MAY NOT ISSUE WARRANT TO SHERIFF.

*SYLLABUS:*

1. *A person arrested for violation of the Crabbe Act may be prosecuted before a mayor.*
2. *A mayor may not issue a warrant to a sheriff nor allow sheriff fees for service of a warrant.*
3. *No fee can be allowed a sheriff or deputy sheriff for aiding a police officer of a city.*

COLUMBUS, OHIO, June 25, 1923.

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

GENTLEMEN:—Acknowledgment is hereby made of your communication of June 7th, which reads:

"In some instances it has been found by state examiners of this department that state prohibition officers have had the sheriff make an arrest for the violation of prohibition laws, and have then taken the case before a mayor's court in a city.

"Question 1. Is such practice legal?

"Question 2. Could the mayor legally tax the sheriff's costs against the defendant in instances of this character?

"Section 3336, General Code, provides that in discharging their duties constables, marshals, chiefs of police and other police officers may call to their aid in state cases the sheriff or deputy sheriff.

"Question 3. In those instances in which the sheriff or deputy sheriff is called to the aid of a police officer in a city, could costs established by law for the services performed by such sheriff or deputy be taxed against the defendant in addition to those taxed for such police officer?"

Sections 13494 and 13496 provide mayors with authority to issue warrants. Section 6212-18, General Code (109 O. L. 144), reads as follows:

"Any justice of the peace, mayor, municipal or police judge, probate or common pleas judge within the county with whom the affidavit is filed charging a violation of any of the provisions of this act, when the offense is alleged to have been committed in the county in which such mayor, justice of the peace, or judge may be sitting, shall have final jurisdiction to try such cases upon such affidavits without a jury, unless imprisonment is a part of the penalty, but error may be prosecuted to the judgment of such mayor, justice of the peace, or judge as herein provided. And in any such cases where imprisonment is not a part of the penalty, the defendant cannot waive examination nor can said mayor, justice of the peace, or judge recognize such defendant to the grand jury; nor shall it be necessary that any information be filed by the prosecuting attorney or any indictment be found by the grand jury. The officers named herein shall have authority to issue search warrants as provided for in section 6212-16 of the General Code, and the jurisdiction granted herein shall be coextensive with the county, whether or not within the county there is a municipality having a municipal court."

I think these sections fully answer your first question. This being, in effect, a question of jurisdiction and as a mayor gets jurisdiction when an affidavit is filed before him, the practice mentioned is legal.

Section 13492 reads:

"A sheriff, deputy sheriff, constable, marshal, deputy marshal, watchman or police officer, shall arrest and detain a person found violating a

law of this state, or an ordinance of a city or village, until a warrant can be obtained."

Section 13500 reads:

"The warrant shall be directed to the sheriff or to any constable of the county, or, when it is issued by an officer of a municipal corporation, to the marshal or other police officer thereof and, by a copy of the affidavit inserted therein or annexed and referred to, shall show or recite the substance of the accusation and command such officer forthwith to take the accused and bring him before the magistrate or court issuing such warrant, or other magistrate of the county having cognizance of the case, to be dealt with according to law."

This section seems to be the only one governing the issuance of warrants from mayor's courts and I can find no statutory provision whereby a mayor may issue a warrant to a sheriff.

Hence, it follows that, if no warrant can issue from a mayor's court to a sheriff, no fees could be charged for a sheriff for service of such writ.

Section 2994: Provides salary for sheriffs.

Section 2996 reads as follows:

"Such salaries and compensation shall be instead of all fees, costs, penalties, percentages, allowances and all other perquisites of whatever kind which any of such officials may collect and receive, provided that in no case shall the annual salary and compensation paid to any such officer exceed six thousand dollars, except in the case of the probate judge whose annual salary shall not exceed nine thousand dollars."

In the case of State, ex rel., Enos, Prosecuting Attorney, v. Stone, et al., 92 O. S. 63, the syllabus is as follows:

"When the general assembly of Ohio has entered upon a general policy of legislation, such as the abolition of the fee system and the establishment of fixed and certain lump sums as compensation for county officers, and provided that such compensation shall be in full payment for all services rendered as such public officer, such general statutes declaring such policy repeal by implication all other statutes in conflict therewith.

"Such policy of the general assembly should not be overturned or invaded by carrying or re-enacting such impliedly repealed statute in the report of a codifying commission, which is subsequently adopted by the general assembly, or by some subsequent enactment of the general assembly, unless such other statute clearly evinces by appropriate language an intention and purpose to provide 'an additional salary'."

"Mere technical rules of law or interpretation may be invoked to preserve the natural justice and substantial equities of any given case, but they should not be permitted to defeat or destroy the same."

Section 4556 provides fees in Mayors' courts shall be same allowed constables.

109 O. L. 305, section 3347 G. C., gives the full list of fees allowed constables, applies to chiefs of police in cities and makes no provision whatever for fees for assistants nor for sheriffs.

Section 2485 reads as follows:

"The county commissioners shall audit and allow a reasonable compensation to any person who is summoned to aid a sheriff or constable or other officer in the execution of any writ or process in favor of the state, but such compensation shall not exceed one dollar per day, and shall be allowed only upon certificate of such officer."

This seems to be the only statute providing for paying anyone for assisting an officer in apprehending a criminal.

Therefore, in regard to your second question, there being no express statutory authority giving mayors right to issue warrants to sheriffs, or for paying them fees, it must be answered in the negative.

There being no statute providing fees for assisting police officers, other than section 2485, General Code, no fee can be charged for a sheriff or deputy for assisting a police officer.

Respectfully,
C. C. CRABBE,
*Attorney General.*

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491.

APPROVAL, BONDS OF SCIOTO TOWNSHIP RURAL SCHOOL DISTRICT, PICKAWAY COUNTY, $14,000, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, June 25, 1923.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

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492.

BUILDING AND LOAN ASSOCIATIONS—NO AUTHORITY TO CHARGE INITIATION OR MEMBERSHIP FEES AFTER JULY 3, 1923—SECTIONS 9643-4, 9645 AND 9649 G. C. CONSTRUED.

*SYLLABUS:*

1. *By virtue of the provisions of section* 9645 *G. C., as amended by House Bill No.* 88, 110 *O. L., contracts entered into by building associations providing for the sale of their stock in consideration of the payment of commissions for such sales, will not, on and after July* 3, 1923, *the effective date of said House Bill No.* 88, *be operative to permit of the sale of any building association stock, whether such commission contract was entered into either before or after April* 3, 1923, *the date on which said House Bill No.* 88 *was filed with the secretary of state.*