

Thus, in specific answer to your second question, I am of the opinion that a judge, to whom the salary reduction law (Amended Substitute House Bill No. 1) does not apply, may refuse to take the reduction as regards the state's contribution and donate the same, or such part thereof as he may elect, to his county.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

115.

CITY POLICEMEN—ENTITLED TO WITNESS FEES IN CRIMINAL CASES BEFORE COMMON PLEAS COURT—SECTION 3024 G. C. CONSTRUED.

*SYLLABUS:*

*City police officers are entitled to the regular witness fees in criminal cases prosecuted in the Common Pleas Court, the effect of Section 3024 of the General Code being to prohibit such fees only in cases before municipal courts, mayors, justices of the peace and similar courts.*

COLUMBUS, OHIO, February 8, 1933.

HON. FRAZIER REAMS, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR:—I have your letter of recent date, which reads as follows:

“We are requested by the new Clerk of Courts of Lucas County to construe Section 3024 of the General Code regarding payment of witness fees to policemen.

It has been the practice here for many years to allow city police officers the regular witness fee in criminal cases prosecuted in our Common Pleas Court. These fees, however, have been donated to the Police Pension Fund in all cases.

We have conferred with the Trustees of the Police Pension Fund who state that, according to the opinion of the City Law Department, handed down a few years ago, they are entitled to claim fees in all state cases tried in Common Pleas Court, under Section 3024, on the ground that said section only prohibits them from collecting fees in Justice of the Peace or similar courts.”

Section 3024 of the General Code provides:

“No watchman or other police officer is entitled to witness fees in a cause prosecuted under a criminal law of the state, or an ordinance of a city before a police judge or mayor of such city, justice of the peace, or other officer having jurisdiction in such causes.”

This section, as it now stands, was construed by one of my predecessors in an opinion reported in the Report of the Attorney General, 1913, Volume 2, page 1417, the syllabus of which reads:

"A police officer of the city is entitled to witness fees when he testifies before the grand jury or in a trial of a criminal case in the Probate Court or in the Court of Common Pleas."

In the course of that opinion, the Attorney General said (at page 1418) :

"In the codification of Section 3015 revised statutes by the enactment of Section 3024, General Code, it will be noticed that a comma is omitted before the word 'before,' but since it is a rule that statutes shall receive the same construction after codification which would have applied to such statutes before codification unless the intent of the legislature is clear to the contrary, I do not believe that the mere elimination of the comma in question would be considered as an intentional change in the statute, and therefore that it should receive the same construction in the codification that it would have received prior to codification."

It was then pointed out that the section as it appeared prior to codification had been construed by this office in two opinions, Opinions of the Attorney General, 1906, page 230 and Opinions of the Attorney General, 1910, page 369. In the 1906 Opinion, the then Attorney General said :

"If the limiting phrase 'before any police judge, etc.,' is read as though referring back to 'ordinance' only, no reason could have existed for mentioning justices of the peace in this connection. No criminal prosecutions for violations of city ordinances can be brought before justices of the peace. Furthermore the words 'police judge, mayor or other officer' comprehend all officers or tribunals before which prosecutions for violations of ordinances can be brought. Why should there have been an enumeration of certain officers if the statute was intended to prevent the allowance of witness fees to police officers in any criminal prosecution before any tribunal whatsoever? If such had been the intent of the legislature it would have been clearly expressed by so much of the statute as precedes the word 'before.'"

The following language also appears in that Opinion :

"It seems to me that there is a basis in reason for the distinction apparently made between the right of police officers to receive witness fees in prosecutions before the officers enumerated, and their right to receive such fees in prosecutions in the court of common pleas. One purpose of the statute probably was to prevent police officers from making unnecessary arrests for the purpose of receiving witness fees. It is conceivable that there might be many instances of unfounded prosecutions before magistrates for the sake of the fees, but the same opportunity for commencing unfounded prosecutions before the court of common pleas does not exist."

I concur in the opinions of my predecessors.

You are therefore advised that city police officers are entitled to the regular witness fees in criminal cases prosecuted in the Common Pleas Court, the effect

of Section 3024 being to prohibit such fees only in cases before municipal courts, mayors, justices of the peace and similar courts.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

116.

APPROVAL, FOUR BONDS FOR THE FAITHFUL PERFORMANCE OF THEIR DUTIES AS RESIDENT DIVISION DEPUTY DIRECTOR, DIRECTOR OF HIGHWAYS AND RESIDENT DISTRICT DEPUTY DIRECTORS—GEORGE MURRAY ANDERSON—OTHO WALTER MERRELL—JOHN WILLARD REPPPEL—OSCAR F. SCHILLING.

COLUMBUS, OHIO, February 8, 1933.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted four bonds, three in the penal sum of \$5,000.00 each, and one in the penal sum of \$10,000.00, with sureties as indicated to cover the faithful performance of the officials as hereinafter listed:

George Murray Anderson, Resident Division Deputy Director in Division No. 9—Commercial Casualty Insurance Company.

Otho Walter Merrell, Director of Highways—The Century Indemnity Company.

John Willard Reppel, Resident District Deputy Director in Ross County—Commercial Casualty Insurance Company of Newark, New Jersey.

Oscar F. Schilling, Resident District Deputy Director in Auglaize, Logan and Shelby Counties—Commercial Casualty Insurance Company of Newark, New Jersey.

The first of the above listed bonds, is evidently executed pursuant to the provisions of Sections 1182 and 1182-3, General Code. Section 1182, General Code, reads, so far as pertinent, as follows:

“Each division deputy director shall give bond in the sum of five thousand dollars, conditioned for the faithful performance of his duties with sureties to the approval of the state highway director. \* \* \*”

Section 1182-3, General Code, states, so far as pertinent:

“All bonds hereinbefore provided for shall be conditioned upon the faithful discharge of the duties of their respective positions, and such bonds, \* \* \* shall be approved as to the sufficiency of the sureties by the director (of highways), and as to legality and form by the attorney general, and be deposited with the secretary of state. \* \* \*”  
(Words in parenthesis, the writer's.)