

faithful discharge of your duties as custodian of the funds of the State Teachers Retirement System. Said bonds are designated in reference to sureties and amount as follows:

<i>Surety</i>	<i>Amount</i>
Fidelity & Deposit Company of Maryland.....	\$100,000 00
National Surety Company.....	150,000 00
Commercial Casualty Insurance Company.....	200,000 00
Maryland Casualty Company.....	50,000 00
Fidelity & Casualty Company of New York.....	100,000 00
Metropolitan Casualty Insurance Company.....	100,000 00
Aetna Casualty & Surety Company.....	100,000 00
American Surety Company of New York.....	200,000 00

Section 7896-13, which makes you the custodian of the funds of the Teachers Retirement System by virtue of your office, requires the giving of a separate and additional bond "in such amount as may be fixed by the Governor, but not less than the amount of money in all of the funds of the retirement system at the time such bond is fixed."

It is assumed, of course, that the Governor has fixed your bond as required by statute.

Finding said bonds in proper legal form, I have noted my approval thereon as to form, and return the same herewith.

Under the provisions of the section the Governor should approve the sureties, and the bonds should be deposited with the Secretary of State.

Respectfully,

C. C. CRABBE,  
*Attorney-General.*

2167.

DEPUTY MARSHAL IS ENTITLED TO FEES EARNED IN STATE CASES.

**SYLLABUS:**

*Deputy marshals of villages may serve warrants from the courts of the village, in state cases, and are entitled to retain the fees charged for such services for their personal use.*

COLUMBUS, OHIO, January 22, 1925.

HON. B. F. McDONALD, *Prohibition Commissioner, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date, containing the following question:

"Is a deputy marshal who has been duly appointed by the council and who is a resident of the municipality, entitled to fees for serving warrants under the prohibition law, he receiving no salary of any kind from the village?"

In the case of *State ex rel. Nead vs. Nolle, Mayor*, the Supreme Court recently held that section 4270 did not affect a mayor's or marshal's fees in state cases, but that they held such fees for their own personal use.

Section 4387, General Code, reads:

"In the discharge of his proper duties, the marshal shall have like powers and be subject to like responsibilities as constables and for services actually performed by himself or his deputies, there shall be taxed the same fees and expenses as are allowed constables."

Section 13500, General Code, reads as follows:

"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 plainly provides for the issuing of warrants to deputy marshals.

This department, in an opinion set out in Vol. 1, page 449, of the Attorney-General's Opinions for 1914, said:

"In a state case the chief of police is entitled to receive only such fees as are paid for services by him personally performed, and the same rule applies to any other municipal officer performing services in a state case.

"When a patrolman is sent to a neighboring city to return a person charged with the commission of a felony or a misdemeanor, a warrant must be issued not to the chief of police, but to the patrolman himself, in which case the patrolman is entitled to receive and retain the fee allowed for such service under section 4581, General Code."

There is no provision of law for a marshal to receive fees made by his deputy, but section 4387 General Code, specifically provides that "for services actually performed by \* \* \* his deputy, there shall be taxed the same fees and expenses as are allowed constables."

The Legislature, in passing section 4387 General Code, evidently classed a deputy marshal as a "police officer" as such term is used in section 13500 General Code, and I am of the opinion that the words, in section 13500, "or other police officer thereof" covers a deputy marshal.

In the opinion of the Attorney-General referred to above, I find this language:

"There is nothing in these sections either, therefore, which authorizes an inferior police officer in a city to act in the name of the chief of police, and I am of the opinion that when a warrant is issued to such an officer he acts in his own name, and whatever fees are authorized to be taxed for the services are taxed also in the name of such officer executing the process or performing the service."

The same would apply to deputy marshals.

I am therefore of the opinion that a deputy marshal is entitled to fees earned by him in state cases for his own personal use, and this, of course, takes in the prohibition statutes.

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