

those powers do not include the power to contract in such a way that a building that might be erected with public funds on lands which later reverted to the original grantors, would pass to said grantors with the lands so reverting. The syllabus of this case reads as follows:

"1. Members of a board of education of a school district are public officers, whose duties are prescribed by law. Their contractual powers are defined by the statutory limitations existing thereon, and they have no power except such as is expressly given, or such as is necessarily implied from the powers that are expressly given.

2. The members of the board of education of a school district are not authorized to convey or transfer to private parties, without consideration, any of the property of the school district, real or personal. Hence, the acceptance by such members of the board of education of a school district of a deed providing that if at any time the premises in question shall cease to be used for school purposes, the same shall at once vest in the said grantors, their heirs and assigns forever, is not effectual to constitute a public school building erected upon such premises with public funds a part of the realty, so that such building passes with the realty upon reversion to the heirs of the grantor."

I am therefore of the opinion that the buildings on the lands in question may be sold in the manner provided for by Section 4756, General Code.

It will be observed, upon an examination of said Section 4756, General Code, that where personal property is to be sold by a board of education, and it does not exceed in value the sum of \$300.00, it may be sold at private sale without giving the thirty days notice by publication provided for by the statute in case the value of the property exceeds \$300.00.

I am therefore of the opinion that the school buildings in question may be sold at any time, either at private sale or by public auction, to the highest bidder without giving the statutory notice referred to. The sale of all these buildings may be made at the same time, by public auction, if it is so desired.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4048.

FEEES OF CONSTABLE—TRANSPORTATION OF INSOLVENT CONVICT TO WORKHOUSE—PAID BY TOWNSHIP—WHEN COUNTY COMMISSIONERS MAY PAY.

SYLLABUS:

Fees of a constable in connection with the transportation of an insolvent person, convicted of a misdemeanor, to a workhouse cannot be paid by the county commissioners under section 3019, General Code, but can only be paid out of the treasury of the township where the sentence was imposed under the provisions of section 4132, General Code, and where an insolvent defendant has served his costs in jail an allowance to the officers, in place of fees other than transportation, may be made by the county commissioners under the provisions of section 3019,

General Code, subject, however, to restrictions contained in that section and in sections 3020 and 3021, General Code.

COLUMBUS, OHIO, February 9, 1932.

HON. NORMAN L. McLEAN, *Prosecuting Attorney, Washington C. H., Ohio.*

DEAR SIR:—I am in receipt of your letter which reads as follows:

“Our County Commissioners have requested me to secure your opinion on the following:

One of the Justices of Peace in this county has presented to the County Commissioners a bill for lost costs on the following case: The defendant was arrested and plead guilty in the Justice of Peace Court to a charge of assault and battery and was sentenced by the Justice of Peace to the workhouse in Cincinnati where he was taken and served out his sentence and costs. The constable transported the prisoner to the workhouse and included the mileage in his costs. Both the prosecuting witness and the defendant were indigent. May the County Commissioners lawfully allow this bill as lost costs under sections 3019 and 3020, G. C.? May the Commissioners under the above statutes lawfully allow on a misdemeanor case lost costs where the defendant and prosecuting witness were indigent and the defendant served the costs in jail?”

Section 3347, General Code, reads as follows:

“For services actually rendered and expenses incurred, regularly elected and qualified constables shall be entitled to receive the following fees and expenses, to be taxed as costs and collected from the judgment debtor, except as otherwise provided by law: Serving and making return of each of the following orders or writs, for each defendant named therein including copies to complete service, if required by law, one dollar; viz., search warrant, warrant to arrest, order to commit to jail, order on jailer for prisoner or prisoners, order of attachment, order of ejectment, order of restitution, and writ of replevin; serving and making return of each of the following notices and writs, for each person named therein, including copies to complete service, if required by law, eighty cents; viz., summons, subpoena, venire and notice to garnishee; serving and making return of execution against property or person, eighty cents, and six per cent. of all money thus collected; serving and making return of any other writ, order or notice, required by law, not mentioned above, for each person named therein including copies to complete service, if required by law, eighty cents; mileage for the distance actually and necessarily traveled in serving and returning any of the preceding writs, orders and notices, first mile fifty cents and each additional mile, fifteen cents; attending criminal case during trial or hearing and including having charge of prisoner or prisoners, each case, two dollars and fifty cents, but when so acting, shall not be entitled to a witness fee if called upon to testify; attending civil court during jury trial, each case, two dollars; attending civil court during trial, without jury, each case, one dollar and fifty cents; actual amount paid solely for the transportation, meals and lodging of prisoners, and the moving and storage of goods and the care of animals taken on any legal process, the same to be specifically itemized on the back of the writs and sworn

to; summoning and swearing appraisers, each case, two dollars; advertising property for sale, by posting, taken on any legal process, one dollar; taking and making return of any bond required by law, eighty cents."

This section provides the fees and expenses to which constables shall be entitled, but does not authorize their payment from any public fund.

Section 12385, General Code, formerly provided for the payment by the county of the actual necessary expenses of an officer in transporting a person to a workhouse in a county other than the one in which sentence was imposed, and provided in case of a constable an additional fee of two dollars (\$2.00) which should be in lieu of any other fees. However, in the enactment of the new penal code, this section has been repealed. 113 O. L. 215.

Section 3019, General Code, provides as follows:

"In felonies wherein the state fails, and in misdemeanors wherein the defendant proves insolvent, the county commissioners, at the first meeting in January, shall make an allowance to justices of the peace and constables, in the place of fees, but in no year shall the aggregate allowance to such officer exceed the fees legally taxed to him in such causes, nor in any calendar year shall the aggregate amount allowed such officer and his successor, if any, exceed one hundred dollars. If there be a successor, said amount shall be prorated on the basis of lost fees."

Section 4132, General Code, provides as follows:

"The officer having the execution of the final sentence of a court, magistrate, or mayor, shall cause the convict to be conveyed to the workhouse as soon as practicable after the sentence is pronounced, and all officers shall be paid the fees therefor allowed by law for similar services in other cases. Such fees shall be paid, when the sentence is by the court, from the county treasury, and when by the magistrate, from the township treasury."

In Opinions of the Attorney General for 1915, Vol. II, page 1404, the third and fourth branches of the syllabus construing sections 4132 and 3019 read as follows:

"Section 4132, G. C., is not to be so interpreted as to provide a special method of payment of all fees of all officers concerned in the prosecution of a case in which a sentence to a workhouse is imposed, but its provisions relate only to the fees of the officer charged with the execution of the sentence, for services in connection with the conveyance of the convict to the workhouse.

Other fees of the officers concerned in a prosecution for a misdemeanor which terminates in a workhouse sentence may be allowed and paid from a public treasury only by virtue of section 3019, G. C., and under the conditions and restrictions therein imposed."

This opinion further says:

"The section (4132), therefore, applies only to the sheriff, constable or marshal in the execution of a sentence of imprisonment in the workhouse and other fees for services in causing 'the convict to be conveyed to the workhouse'. * * *

But for payment of fees for services other than those in connection with conveying prisoners to the workhouse out of the public treasury, recourse must be had, in my opinion, to section 3019, G. C., which permits the allowance to justices of the peace, police judges or justices, mayors, marshals, chiefs of police and constables, of the fees earned and lost by them in misdemeanor cases by reason of the insolvency of the defendant, not exceeding in the aggregate one hundred dollars (\$100.00) in any one year for any one officer."

I am of the opinion, therefore, that the fees of a constable in connection with the transportation of an insolvent person, convicted of a misdemeanor, to a workhouse cannot be paid by the county commissioners under section 3019, General Code, but can only be paid out of the treasury of the township where the sentence was imposed under the provisions of section 4132, General Code, and that where an insolvent defendant has served his costs in jail an allowance to the officers, in place of fees other than transportation, may be made by the county commissioners under the provisions of section 3019, General Code, subject, however, to restrictions contained in that section and in sections 3020 and 3021, General Code.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4049.

BOARD OF ELECTIONS—DISCRETIONARY WHETHER OR NOT TO ALLOW CHALLENGERS AND WITNESSES—UNAUTHORIZED TO ALLOW FOR ONE CANDIDATE AND NOT FOR ANOTHER—WHERE TIE VOTE BY BOARD, SECRETARY OF STATE DECIDES QUESTION.

SYLLABUS:

1. *Under authority of the case of State, ex rel. vs. Bernon, et al., decided by the Court of Appeals of Cuyahoga County, January 12, 1932, the board of elections of Cuyahoga County may, in its discretion, refuse challengers and witnesses to both candidates for mayor appearing on the ballot at the non-partisan election to be held February 16, 1932, or allow challengers and witnesses to either of the two candidates when so requested, but the board may not allow challengers and witnesses to one of the candidates and refuse challengers and witnesses as to the other candidate.*

2. *In the event of a tie vote by the board of elections of Cuyahoga County upon whether or not a request for challengers and witnesses at the election to be held in Cleveland February 16, 1932, shall be allowed or refused, it is the duty of the Secretary of State, as Chief Election Officer, to summarily decide the question when submitted to him by the clerk of such board.*

COLUMBUS, OHIO, February 10, 1932.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"The following question has arisen upon which I would like your