

There is no separation of these different classes of bonds in the bond ordinance and the issue in this form is probably in violation of section 4225 G. C.

3. The transcript contains no legislation in accordance with statutory provision that would indicate that property owners have been notified or bound to pay these assessments against abutting properties.

In view of the failure of the transcript to show legal proceedings in the issuance and sale of these bonds, you are advised not to purchase the same.

Respectfully,

C. C. CRABBE,

*Attorney-General.*

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2184.

APPROVAL, BONDS OF HARRISON VILLAGE SCHOOL DISTRICT, HAMILTON COUNTY, \$75,000.00.

COLUMBUS, OHIO, January 28, 1925.

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

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2185.

APPROVAL, BONDS OF VILLAGE OF SOUTH EUCLID, CUYAHOGA COUNTY, \$152,000.00.

COLUMBUS, OHIO, January 28, 1925.

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

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2186.

APPROVAL, BONDS OF BEREA RURAL SCHOOL DISTRICT, HAMILTON COUNTY, \$15,000.00.

COLUMBUS, OHIO, January 28, 1925.

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

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2187.

AN ATTORNEY APPOINTED TO ASSIST A PROSECUTING ATTORNEY, WHO IS LATER APPOINTED PROSECUTOR MAY NOT LEGALLY RECEIVE COMPENSATION FOR SERVICES AS SUCH ASSISTANT RENDERED AFTER HIS APPOINTMENT AS PROSECUTOR.

**SYLLABUS:**

*Where an attorney is appointed to assist the prosecuting attorney in the trial of a murder case, and later the prosecuting attorney resigns, and the attorney appointed to*

*assist is appointed prosecutor, it becomes the duty of the newly appointed prosecutor, when duly qualified, to conduct the case, and he may not legally receive any compensation for his services as such assistant rendered after his appointment as prosecutor.*

COLUMBUS, OHIO, January 31, 1925.

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

GENTLEMEN:—Your recent communication requesting my opinion, reads:

“We are just in receipt of the following communication from Mr. Ralph O. Wead, Auditor of Greene County:

“December 20, 1924, the prosecuting attorney of Greene County tendered his resignation to take effect at once, gave up his office and drew his final salary to date.

“December 22, 1924, the Judge of the Common Pleas Court appointed H. C. Armstrong and E. D. Smith to assist in the trial of Cliff W. Latimer, indicted for murder in the first degree.

“December 24, 1924, the Judge of Common Pleas Court accepted the resignation of the former prosecutor, and the same date appointed H. C. Armstrong, prosecutor of Greene County.

“We have now on file two bills to present to the county commissioners, approved by the Judge of the Common Pleas Court, to-wit: H. C. Armstrong, \$500.00 for prosecuting Cliff Latimer; and E. D. Smith, \$500.00 for prosecuting Cliff Latimer.

“Are the above regular and lawful bills?”

“We respectfully request your opinion on the above matter as set forth in the letter of Mr. Wead. We are enclosing herewith entries made in the appointment of counsel to assist in the above mentioned murder trial, the resignation and appointment of prosecuting attorney.”

The facts established by your communication and enclosures, in so far as the question presented is concerned, are:

H. C. Armstrong was appointed to assist in the trial of a first degree murder case December 22, 1924. Two days thereafter the resignation of the prosecuting attorney was accepted by the court, and on the same date the said H. C. Armstrong, theretofore appointed to assist in the trial of the murder case, was appointed prosecuting attorney. The county auditor now has a bill, approved by the Judge of the Court of Common Pleas, to present to the county commissioners for the amount of \$500.00 as compensation for H. C. Armstrong, the present prosecutor.

Under the provisions of section 2916, it is the duty of the prosecuting attorney to

“prosecute on behalf of the state all complaints, suits and controversies in which the state is a party, and such other suits, matters and controversies as he is directed by law to prosecute within the county, in the probate court, common pleas court and court of appeals.”

It is evident that it was the duty of H. C. Armstrong, upon becoming qualified as prosecuting attorney, to prosecute the murder case. Irrespective of whatever duties were cast upon him in accepting the appointment as assistant to the prosecutor, such duties became merged in his duties as prosecutor as soon as he was qualified.

Section 3003 of the General Code provides for the annual salary of the prosecuting attorney, and in part provides:

"Such salary shall be paid in equal monthly installments, from the general fund, and shall be in full payment for all services required by law to be rendered in an official capacity on behalf of the county or its officers, whether in criminal or civil matters."

It is evident from the above express provision of the statute that a prosecuting attorney may not draw more for his services in connection with the performance of his duties than the salary therein provided for. Of course, it is assumed that the appointment was made in pursuance of the provisions of section 13562, which reads:

"The common pleas court or the court of appeals, whenever it is of the opinion that the public interest requires it, may appoint an attorney to assist the prosecuting attorney in the trial of a case pending in such court, and the county commissioners shall pay such assistant such compensation for his services as such court approves and to them seems just and proper."

From the above, it will be apparent that the compensation to be paid for such services is to be determined by the county commissioners. In the case of *State vs. Commissioners*, 40 O. S. 331, it was held:

"When an attorney appointed under this section presents his bill for services, approved by the court, it is the duty of the county commissioners to act and allow such sum as seems to them just and proper; they may be compelled to act."

In *Commissioners vs. Osborn*, 46 O. S. 271, it was held that there is no appeal from the final allowance made by the commissioners to an attorney appointed by the court to assist the prosecution in a criminal case.

In view of the foregoing, it is apparent that the county commissioners would not be authorized to pay a claim which is not approved by the court. However, the fact that the claim is approved by the court has nothing to do with the commissioners' power to fix the allowance a different amount. Under such circumstances such amount may be paid as to the commissioners seems just and proper.

It will be apparent that the said H. C. Armstrong could not have possibly performed services for which he is entitled to compensation as assisting in the prosecution of said murder case for a longer period than two days. Undoubtedly for the services rendered during this period under his appointment as assistant, he would be entitled to a reasonable compensation, upon the approval of the judge, and the allowance by the county commissioners.

Of course, it may be pointed out that while the commissioners are the final authority as to the amount of compensation, in the event that an allowance should be made that would be wholly unreasonable for the amount of service rendered, the court could control such action on the ground that it would constitute an abuse of discretion.

In view of what has been said, it would seem unnecessary to discuss specifically the other claim to which your communication refers.

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