

against a defendant. However, in cases of acquittal, no authority exists in cases involving the violation of the sections in question for the payment of costs.

Your attention is directed to Section 13432-20 General Code, which provides:

"When the offense charged is a misdemeanor, the magistrate or court before issuing the warrant, may require the complainant, or if he consider the complainant irresponsible, may require that he procure a person, to be liable for the costs if the complaint be dismissed, and the complainant or other person shall acknowledge himself so liable, and such court or magistrate shall enter such acknowledgement on his docket. Such bond shall not be required of an officer authorized to make arrests when in the discharge of his official duty, or other person or officer authorized to assist the prosecuting attorney in the prosecution of offenders."

You will note from a reading of this section that a complaining witness, upon giving security for costs, may be liable for the costs of prosecution if the complaint is dismissed. Therefore, by virtue of the provisions of this section, costs may be collected in cases of acquittal, from a complaining witness who has given security for costs.

In specific answer to your inquiry, I am of the opinion that no authority exists for the payment of costs in case of an acquittal in a criminal prosecution for violation of Sections 12604 to 12604-3, inclusive, of the General Code. However, a complaining witness other than an officer authorized to make arrests when in the discharge of his official duties, or other person or officer authorized to assist the prosecuting attorney in the prosecution of offences, may be liable for costs in case of an acquittal, if the magistrate requires such complaining witness to give security for costs.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2039.

TOWNSHIP TRUSTEE—SUPERVISING ROAD IMPROVEMENT FINANCED BY GAS TAX FUNDS—COMPENSATION IN EXCESS OF \$250.00 LIMIT FOR TOWNSHIP SERVICES UNAUTHORIZED.

SYLLABUS:

A township trustee, in the performance of his duties in connection with the improvement of roads by the use of the gasoline tax moneys provided for under Section 5541-8 of the General Code, is engaged in the business of the township and may not receive compensation for such services in excess of the limitations provided in Section 3294 of the General Code.

COLUMBUS, OHIO, June 27, 1930.

HON. CHARLES O. CHAPMAN, *Prosecuting Attorney, McArthur, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

"Some of the township trustees in this county have asked me if they cannot receive pay for superintending the improvement of highways under the provisions of Section 5541-8 of the General Code of Ohio, even where

they have, or shall have, received the maximum amount allowed under Section 3294 of the General Code. I have given it as my opinion that they can receive no pay except such as is specifically provided by statute, and that it would be unlawful for them to receive any payment for services as such trustees in addition to that so specifically provided. Some of them claim and seem to believe that, since additional duties are imposed upon them, they should receive additional compensation, although not specifically provided.

Please advise whether it is lawful for them to receive any compensation from the so-called 'gasoline fund' for such service, even though they receive in addition thereto the maximum allowed to them from the township treasury in Section 3294."

Section 5541-8 of the General Code, as amended by the 88th General Assembly (113 O. L. 71), provides that ten per cent of the highway construction fund referred to in said section shall be appropriated for and divided into equal proportions among the several townships within the state. The section further provides for the payment of said funds by the county treasurer to each township, which funds are to be expended for the sole purpose of constructing, widening and reconstructing public roads within such townships. The section further provides that said funds shall be used by township trustees for the purposes therein specifically set forth. However, the section does authorize the township trustees to pass a resolution permitting the county commissioners to expend such funds for the improvement of such roads.

It will be assumed for the purposes of this opinion that you refer to a situation wherein trustees are using said moneys for the purposes of road improvement, as mentioned in the section, as contradistinguished from a case wherein the township trustees have authorized the county commissioners to use said funds. Obviously, when the trustees are using said funds for the purposes mentioned in said section, they are functioning in their official capacity in the performance of their duties for the township.

Section 3294 of the General Code, which fixes the compensation of township trustees, expressly provides that each trustee may not be paid in excess of two hundred and fifty dollars annually for his services in connection with the business of the township. While it has frequently been held that this section only relates to moneys to be expended from the township treasury, and would not inhibit such an officer from receiving compensation from some other source, it is a limitation as to the amount he may receive from the township treasury for his duties as township trustee. If such a trustee were to receive funds from the source you mention, it is obvious that he would be receiving it from the township treasury.

In view of the foregoing, and in specific answer to your inquiry, you are advised that a township trustee, in the performance of his duties in connection with the improvement of roads by the use of the gasoline tax moneys provided for under Section 5541-8 of the General Code, is engaged in the business of the township and may not receive compensation for such services in excess of the limitations provided in Section 3294 of the General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.