

1478.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN
LORAIN AND CRAWFORD COUNTIES.

COLUMBUS, OHIO, August 5, 1920.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*

1479.

APPROVAL, ABSTRACT OF TITLE, PREMISES IN CLINTON TOWNSHIP,
WOOD BROWN PLACE, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, August 5, 1920.

HON. CARL E. STEEB, *Secretary, Board of Trustees, Ohio State University, Columbus, O.*

DEAR SIR:—You have submitted an abstract, last continued by J. K. Kennedy, attorney, on July 30, 1920, and requested my written opinion in reference to the status of the title to the following described premises:

“Situate in the township of Clinton, county of Franklin and state of Ohio and being lot No. thirty seven (37) of Wood Brown Place as the same is numbered and delineated upon the recorded plat thereof of record in plat book No. 5, pages 196 and 197 recorder’s office, Franklin county, Ohio.”

A careful examination has been made and it is believed that said abstract discloses a good and sufficient title to said premises to be in the name of Grover C. Seegar on July 30, 1920, the date of the last continuation of said abstract, free from incumbrances excepting the taxes for the year 1920 which are unpaid and a lien. Said abstract recites that no examination was made in any of the United States courts.

Respectfully,

JOHN G. PRICE,
Attorney General.

1480.

LIMA CRIMINAL COURT—SECTION 14740-28 G. C. FIXES FEES OF
SUCH COURT BUT DOES NOT PROVIDE FOR THEIR TAXATION
AS COSTS.

Section 14740-28 of the Lima criminal court act fixes the fees in such court but does not provide for their taxation as costs and for their inclusion in the sentence in criminal cases.

COLUMBUS, OHIO, August 5, 1920.

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

GENTLEMEN:—Acknowledgement is made of the receipt of your recent request for the opinion of this department, as follows:

"We are calling your attention to the act establishing a criminal court in the city of Lima, Ohio, 106 O. L., 112, with the first two sections thereof somewhat modified. 107 O. L., 49. We are particularly directing you to section 14740-28 G. C., which provides that witnesses and jurors shall receive the same fees as are allowed jurors and witnesses in courts of justices of the peace and further provides: 'other fees shall be the same as before justices of the peace in like cases.'

It has been the practice of the judges of this court in passing judgments to assess only fines and no costs or fees of any nature. The judges claim that under the law they are not required so to do.

Does not the law demand that in the criminal court of Lima, Ohio, costs and fees shall be assessed?"

Sections 14740-24 G. C. and 14740-25, as amended in 107 O. L., page 49, relate to the jurisdiction and powers of the criminal court at Lima, established by the act found in 106 O. L., page 112. By the first of these sections jurisdiction is conferred on this court over "any offense under any ordinance of the city of Lima and of any misdemeanor committed within the limits of Allen county to hear and finally determine the same, and impose the prescribed penalty."

Section 14740-28 in part relates to fees, that section providing that jurors and witnesses shall receive the same fees as provided in justices of the peace courts, and further provides "other fees shall be the same as before justices of the peace in like cases."

These provisions may be said to be sufficiently clear to fix the amount of such fees in the Lima criminal court, but is this equivalent to providing that such fees shall be taxed and included in the judgment or sentence? Before such fees may be taxed and collected as costs, statutory provision therefor must be found. The case of *State vs. Auditor*, 77 O. S., 333, is directly in point. In that case (at page 338) the supreme court defined costs to be:

"Costs, in the sense the word is generally used in this state, may be defined as being the statutory fees to which officers, witnesses, jurors and others are entitled for their services in an action or prosecution and which the statutes authorize to be taxed and included in the judgment or sentence."

In this case the right of the county to employ and pay an expert witness was unquestioned, but because of the absence of any statutory provision for including the compensation of such witness in the cost bill, it was held that such an expense could not be included in the "costs" as understood in the statutes relative thereto.

In *state ex rel. vs. Commissioners*, 14 Cir. Ct., 26, it is also said that the word "costs" has a legal signification and includes only those expenditures which are by law taxable.

The provision above quoted, while fixing the amount of the fees payable, does not provide for the taxation and inclusion of such fees in the sentence as a part of the costs, and so far as the Lima court act itself is concerned, it does not provide for making such fees a part of the costs, and this is as far as this question at this time may be categorically answered.

Under section 3666 G. C. the city council by ordinance may provide for the imprisonment of "any person who refuses or neglects to pay the fine imposed on conviction of such offense and the costs of prosecution." If a particular ordinance or statute of itself should provide for the taxation of the costs of prosecution, then under section 14740-24 the criminal court at Lima is authorized to "impose the prescribed penalty," which may properly include the costs of prosecution. It of course will be

noted that the taxation of costs would depend in such a case upon the terms of the ordinance or statute.

Section 12375 provides in part that:

"In all sentences in criminal cases, the court shall include therein and render a judgment against the defendant for the costs of prosecution;"

but if this section could be held to apply to and include the Lima criminal court, it would not materially assist in the solution of the question, because while this section provides that the sentence shall include "the costs of prosecution," the question still remains to be determined, what is to be included in those "costs." So that, except as above noted, your question can only be generally answered in this way and to this extent: that the taxation and inclusion of fees as costs in the sentence in the criminal court at Lima is not provided for in the act creating such court and may not be so taxed and included unless provision therefor is made in the particular ordinance or statute upon which the prosecution is based.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1481.

BANKS AND BANKING—COMPUTATION OF INTEREST—WHEN THREE HUNDRED AND SIXTY DAYS IS NOT AN ILLEGAL METHOD OF COMPUTING INTEREST UPON LOANS TO MUNICIPALITIES UNDER SECTION 3913 G. C.

1. *In the computation of interest for a portion of a year expressed in "days," where exactness is desired, three hundred and sixty-five days should be used as the basis.*
2. *The method of computing interest for the fractional part of a year expressed in "days," using three hundred and sixty days as a basis, being a usage and custom in universal operation, can not be said to be illegal if employed to determine the interest due upon loans made to municipalities under section 3913 G. C.*

COLUMBUS, OHIO, August 5, 1920.

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

GENTLEMEN:—In your communication of recent date you request a written opinion on the following statement of facts:

"It is a largely prevalent custom of the banks of this state, in computing interest on loans made to the various municipalities under authority of sections 3913 and 3915 G. C. to use interest tables based upon a year of 360 days. Thus if such a loan runs 60 days, sixty-three-hundred sixtieths (60-360) of a year's interest is charged. Based upon this method the municipalities pay thousands of dollars more interest upon such loans than they would pay if the basis of computation were taken on a year of 365 days or 366 days.

Question: Is this legal?'

Section 3913 to which you refer, is as follows:

"In anticipation of the general revenue fund in any fiscal year, such cor-