

pose of purchasing a site for a junior high school building and a play ground. Incorporated in the transcript is a financial statement showing that the tax valuation for the year next preceding the passage of the resolution was \$3,950,900.00.

Section 2293-15, General Code, enacted by the 87th General Assembly as a part of House Bill No. 1, effective August 10, 1927, provides:

“The net indebtedness created or incurred by any school district without a vote of the people shall never exceed one-tenth of one per cent of the total value of all property in such school district as listed and assessed for taxation. * * *”

Section 2293-15, supra, also provides what bonds shall not be considered in ascertaining the net indebtedness of the district. Upon examination of said section I do not find that the above bond issue may be construed to come within any of the exceptions therein stated.

Under the provisions of Section 2293-15, supra, the net indebtedness created or incurred by Pomeroy Village School District, without a vote of the people, can not exceed the sum of approximately \$3,950.00. It is therefore clear that the board is not permitted by law to issue the above bonds.

For the foregoing reasons, I am compelled to advise you not to purchase the above issue of bonds.

Respectfully,

EDWARD C. TURNER,

Attorney General.

1304.

APPROVAL, AMENDMENT TO THE ARTICLES OF INCORPORATION OF THE SUTTON AND CHESTER FARMERS MUTUAL FIRE INSURANCE COMPANY.

COLUMBUS, OHIO, November 28, 1927.

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

DEAR SIR:—I am returning to you herewith the amendment to the Articles of Incorporation of the Sutton and Chester Farmers Mutual Fire Insurance Company with my approval endorsed thereon.

Respectfully,

EDWARD C. TURNER,

Attorney General.

1305.

DISCHARGE FROM WORKHOUSE—BY PAYMENT OF BALANCE OF FINE AND COST AFTER RECEIVING CREDIT FOR EACH DAY OF CONFINEMENT SERVED.

SYLLABUS:

Under either Section 12387 or Section 13717, General Code, a defendant committed to a workhouse until his fine and costs are paid is entitled to be discharged at any time

by paying the balance of his fine and costs after receiving a credit of one dollar and a half for each day of confinement served.

COLUMBUS, OHIO, November 28, 1927.

HON. JAY S. McDEVITT, *Prosecuting Attorney, Mt. Vernon, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter dated November 19, 1927, which reads as follows:

“Section 13717 of the General Code of Ohio reads:

‘When a fine is the whole or a part of a sentence, the court or magistrate may order that the person sentenced remain imprisoned in jail until such fine and costs are paid, or secured to be paid, or he is otherwise legally discharged, provided that the person so imprisoned shall receive credit upon such fine and costs at the rate of one dollar and a half per day for each day’s imprisonment.’

The following case has arisen in Knox County. A pled guilty to a charge of possession of intoxicating liquor and was fined \$800.00 and costs and was sentenced to the work house until such fine and costs are paid, or secured to be paid, or otherwise legally discharged. The section of the statute above quoted provides that the person so imprisoned shall receive credit upon such fine and costs at the rate of one dollar and a half per day for each day’s imprisonment. The court understands now that the defendant who has served some time in the work house, desires to pay the balance of his fine. The question which has arisen in the mind of the court and the same question has arisen in other cases besides the one referred to above, as to whether after a man has been committed to the jail or work house until such fine is paid, or secured to be paid, or he is otherwise legally discharged, whether he should be credited with one dollar and a half per day for the time which he has served or whether after he has once been committed to the jail or work house, he would be required to pay the entire fine irregardless of the time he might have served in working out the fine at the rate of one dollar and a half.

The whole question under this section is whether or not a man being sentenced as stated above, can work out or lay out part of the fine at the rate of one dollar and a half per day and then pay the balance of it and be discharged.”

On March 4, 1925, the Legislature passed an act entitled:

“An Act—To amend Sections 3666, 12387 and 13717 of the General Code, relative to the payment of fines and costs.”

which act amended these several sections to read as they now appear in the General Code, viz.:

Sec. 3666. “The council may provide that any person who refuses or neglects to pay the fine imposed on conviction of any such offense, and the costs of prosecution, shall be imprisoned and kept at hard labor until, at the rate of one dollar and a half for each day’s labor, exclusive of Sundays, he shall have earned an amount equal to such fine and costs.”

Sec. 12387. "In cases where a fine may be imposed in whole or part in punishment of an offense, or for a violation of an ordinance of a municipality, and such court or magistrate could order that such person stand committed to the jail of the county or municipality until the fine and the cost of prosecution are paid, the court or magistrate may order that such person stand committed to such work house until such fine and costs are paid, or until he is discharged therefrom by allowing a credit of one dollar and a half per day on the fine and costs for each day of confinement in the work house, or until he is otherwise legally discharged."

Sec. 13717. "When a fine is the whole or a part of a sentence, the court or magistrate may order that the person sentenced remain imprisoned in jail until such fine and costs are paid, or secured to be paid, or he is otherwise legally discharged, provided that the person so imprisoned shall receive credit upon such fine and costs at the rate of one dollar and a half per day for each day's imprisonment."

Your attention is directed to Section 12387, supra, which in my opinion, was the section by which the defendant was committed to the work house rather than Section 13717, supra, to which you refer.

Answering your question specifically, it is my opinion that under either Section 12387 or Section 13717, General Code, a defendant committed to a work house until his fine and costs are paid is entitled to be discharged at any time by paying the balance of his fine and costs after receiving a credit of one dollar and a half for each day of confinement served. (See *Hamilton vs. State*, 78 O. S. 76.)

Respectfully,

EDWARD C. TURNER,
Attorney General.

1306.

JUSTICE OF THE PEACE—EXPIRATION OF OFFICE WHEN MUNICIPAL COURT IS ESTABLISHED—MANSFIELD MUNICIPAL COURT—ELECTION OR APPOINTMENT OF CONSTABLE.

SYLLABUS:

1. *Under the provisions of the act providing for the establishment of a municipal court for the city of Mansfield and Madison Township, Richland County, Ohio, (112 O. L., 323), a justice of the peace in said township, whose term of office has not expired when the municipal judge elected under said act qualifies and commences his term of office on January 1, 1928, will continue in office with jurisdiction in civil and criminal cases until the expiration of the term of such justice of the peace on December 31, 1929.*

2. *It appearing that no constable was elected in said township at the election held November 8, 1927, the board of trustees of the township is authorized to appoint a constable.*

COLUMBUS, OHIO, November 28, 1927.

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

GENTLEMEN:—This is to acknowledge receipt of your communication under date of November 16, 1927, in which you call my attention to certain provisions of an act passed at the recent session of the General Assembly establishing a municipal court in and for the City of Mansfield and Madison Township, Richland County, Ohio, (112 O. L. 323), and submitting for my opinion certain questions as follows: