

course, the notes were validly issued under section 2293-4, General Code, and are therefore valid obligations of the subdivision. Such notes would unquestionably constitute a debt charge and in the event of default a sufficient amount required for all debt charges must be included in the annual budget of the subdivision. Section 5625-21, General Code.

With respect to the power of a bank to hold past-due paper, this is a matter under the jurisdiction of the Superintendent of Banks. It has no bearing on the problems of the school district and I assume that you are not requesting an opinion thereon.

Coming now to your third question, I am not aware of any section of the General Code which specifically imposes any liability upon the members of the board of education or the clerk of such a board for diverting funds appropriated for the payment of notes to general school operating purposes. Your attention is, however, directed to the provisions of the Budget Law, as contained in Sections 5625-1 to 5625-39, both inclusive.

Section 5625-33, General Code, provides that "No subdivision or taxing unit shall make any expenditure of money unless it has been appropriated as provided in the Budget Law." Section 5625-37 of that law imposes a penalty upon any officer, employe or other person who expends any public funds contrary to the provisions of that act. Should the diversion of these funds result in the expenditure of money not appropriated as provided in Sections 5625-29, 5625-30 and 5625-32, then Section 5625-37 would be applicable. Otherwise, your inquiry must be answered in the negative.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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4783.

APPROVAL, BONDS OF URBANCREST RURAL SCHOOL DISTRICT,  
FRANKLIN COUNTY, OHIO—\$8,500.00.

COLUMBUS, OHIO, December 3, 1932.

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

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4784.

PROBATE JUDGE—LIMITED TO \$10 IN FEES WHERE ASSETS OF AN  
ESTATE ARE \$500 OR LESS.

*SYLLABUS:*

*The ten dollar limitation contained in Section 10501-42, subsection 48, General Code, applies to the total amount of fees chargeable by a probate judge against an estate, the assets of which do not exceed \$500 in value, regardless of the nature or*

*number of independent proceedings which may be involved in the administration of such estate.*

COLUMBUS, OHIO, December 5, 1932.

HON. HARRY M. MILLER, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR:—Your recent request for my opinion reads:

"The probate judge of this county has asked me whether or not Section 10501-42, section 48, General Code, applies in all guardianship proceedings where the ward's estate is under \$500.00. The cases in question involve the costs which were taxed for the appointment of a guardian for a minor and the subsequent settlement of the ward's claim for personal injury to himself. Costs amounting to \$17.50 were taxed against the party responsible for the injury. In the particular case an insuring company made the settlement on behalf of its insured. Objection was made to the costs which were taxed, claiming that the same under the above section could not exceed \$10.00.

Kindly advise me whether or not it is your opinion that the limitation of \$10.00 applies in all cases regardless of the nature or number of independent proceedings which may be involved in the administration of a ward's estate."

Section 10501-42, General Code, reads in part as follows:

"The fees enumerated in this section shall be charged and collected, if possible, by the probate judge and shall be in full for all services rendered in the respective proceedings.

\* \* \* \* \*

48. Provided, however, that in estates the assets of which do not exceed Five Hundred Dollars in value the total fees of the probate judge chargeable against such estate shall not exceed . . . . \$10.00."

It is apparent from the foregoing that the limitation on the total amount of the fees of the probate judge chargeable to an estate, the assets of which do not exceed \$500.00, shall be \$10.00.

It should also be noted that there exists no authority in such section for a probate court to tax the costs incurred in the settlement of a claim by a guardian to the person against whom the claim was asserted.

In view of the specific wording of Section 10501-42, subsection 48, General Code, I am of the opinion that the limitation of \$10.00 in such section applies to the total amount of fees chargeable by a probate judge against an estate, the assets of which do not exceed \$500 in value, regardless of the nature or number of independent proceedings which may be involved in the administration of such estate.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*