

and equipment and within the implied powers of said board. However, it is not believed that a board would be permitted to expend funds for a subscription for the individual members of the board. A proper subscription undoubtedly would be limited to one, which publication would be the property of said board to be used by its members. Furthermore, if the character of such a journal were such as to have no application to the work of such a board, it follows that it could not legally make such a purchase. On the other hand, it is believed, if the journal is devoted to subjects of general or special interest in connection with the duties of a board of education, by implication the law will authorize such a purchase or subscription, the payment for which may be made out of the school funds.

Very respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

1034.

**MUNICIPAL CORPORATION—MAYOR—PROHIBITED—FROM DESTROYING PAPERS DULY FILED IN CASE—MAYOR NOT REQUIRED BY STATUTE TO GIVE RECEIPTS—IN CRIMINAL CASE ESSENTIAL THAT AN AFFIDAVIT OR COMPLAINT BE FILED CHARGING AN OFFENSE AGAINST ORDINANCE OR STATUTE BEFORE WARRANT MAY ISSUE.**

1. *Under the provisions of section 13088 G. C. a mayor is prohibited from abstracting or destroying papers duly filed in a case properly brought before him.*
2. *There is no provision of law requiring a mayor to give receipts.*
3. *In a criminal case it is essential that an affidavit or complaint be filed charging the accused with an offense against the ordinances of the city or the statutes of the state before a mayor may issue a warrant or hear and determine said case.*

COLUMBUS, OHIO, February 27, 1920.

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

GENTLEMEN:—In your communication of recent date you submit for an opinion the following questions:

- “1. Is it obligatory for the mayor to keep all the papers and records relating to a case on file as public records?
2. Is it mandatory that he give receipt?
3. Is it not mandatory that affidavit be filed in cases coming before the mayor?”

Section 4550 G. C. provides:

“He shall keep a docket, and shall be entitled to receive the same fees allowed justices of the peace for similar services. He shall keep an office at a convenient place in the corporation, to be provided by the council, and shall be furnished by the council with the corporate seal of the corporation, in the center of which shall be the words, ‘Mayor of the city of -----,’ ‘Mayor of the village of -----,’ as the case may be.”

An examination of the statutes does not disclose any provisions other than

above set forth expressly designating what records a mayor is required to keep in connection with cases coming before him.

Under the provisions of section 277 G. C. the auditor of state as chief inspector and supervisor of the Bureau of Inspection and Supervision of Public Offices, shall prescribe and require the installation of a uniform system of accounting, etc., which empowers him to prescribe other forms and records to be kept by the various officers of the state. Inasmuch as the facts stated in your letter do not indicate that there is any question raised under this provision, the same will not be further considered herein.

Section 13088 G. C. provides:

“Whoever maliciously alters, defaces, mutilates, destroys, abstracts or conceals the whole or part of a record, authorized to be made by law, of or pertaining to a court, justice of the peace of a state, county, township or municipal office or officer, or other public record authorized by law or a paper or writing duly filed with, in or by such court, office or officer, shall be fined not more than three hundred dollars or imprisoned not more than three months, or both.”

Under the provisions of this section. There are two classes of documents the destruction of which is prohibited, namely: “records authorized to be made by law” and “a paper or writing duly filed with, in or by such court, office or officer.”

In view of the provisions of section 13088 supra a mayor as well as all other persons, is prohibited from the abstraction or destruction of papers duly filed in his office, which of course operates the same as if said papers were expressly required to be kept. Records or papers of this character are not the personal property of the officer, but public records to be kept and preserved for the benefit of the public and said officer is the custodian of the same. The policy of this state has been that public records shall be protected and preserved in strict compliance of law.

Replying to your first inquiry, you are advised that a mayor is obliged to keep such papers or writings as are duly filed in his office in connection with a case and that such papers or writings when so filed are public records.

Referring to your second inquiry, you are advised that the statutes do not specify any requirements relating to the mayor giving a receipt, and while such a practice is commendable from a business standpoint, in view of the fact that the law does not expressly or by implication make such a requirement, said inquiry must be answered in the negative.

It was assumed in the consideration of your first and second questions, as will be assumed in reply to your third inquiry, that you refer to mayors in cities which do not have police courts or municipal courts. In such cases the mayor is empowered to hear and determine prosecutions for the violation of ordinances and in other criminal proceedings his jurisdiction is concurrent with justices of the peace.

Under the provisions of section 13494 G. C., the mayor may issue a warrant for the arrest of persons charged with a crime and hear and determine said causes, as provided by law.

Section 13496 G. C. provides:

“When an affidavit charging a person with the commission of an offense is filed with a justice of the peace, mayor or police judge, if he has reasonable ground to believe that the offense charged has been committed, he shall issue a warrant for the arrest of the accused.”

In view of the foregoing, it is clear that a mayor or other magistrate may not hear or determine a criminal case unless there has been an affidavit filed charging the

accused with the commission of an offense prescribed by the ordinances of the city or the statutes of the state and a warrant has been issued in pursuance of the filing of said complaint.

In specific answer to your third inquiry, you are advised that it is essential than an affidavit be filed making a complaint against a person in a criminal case before a mayor is authorized to hear or determine the same.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

1035.

PROBATE JUDGE—BUREAU OF WAR RISK INSURANCE—CERTIFICATE  
 OF BIRTHS, DEATHS OR MARRIAGES FURNISHED FREE FOR  
 SUCH PURPOSES.

*Under the provisions of section 1604 G. C. it is not only permissible for probate judges to furnish free of charge certificates of births, deaths or marriages in the matter of the procurement of compensation or insurance, due a soldier of the world war under the federal war risk insurance act, but under said section probate judges are prohibited from making any charge for such services.*

COLUMBUS, OHIO, February 27, 1920.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your letter requesting my opinion upon the following question:

“Section 1604, General Code, provides that probate judges shall administer oaths and make certificates in pension and bounty cases without compensation. Would this section permit the probate judges to furnish free certificates of births, deaths or marriage in the matter of the procurement of compensation or insurance due a soldier of the world war under the recent federal enactments? We ask this question because of the requirements of the county salary law which provides that officers named therein shall tax and collect the fees allowed by law for the benefit of the fee funds of their offices.”

Section 1604 G. C. provides:

“The probate judge shall administer oaths, and make certificates in pensions and bounty cases, without compensation.”

It is also noted in this connection that section 2905 G. C., in reference to the clerk of the court of common pleas, provides as follows:

“The clerk of courts shall make no charge whatever for certificates made for pensioners of the United States government, or any oath administered in pension and bounty cases, or on pension vouchers, applications, or affidavits.”

The material question presented for determination by your inquiry is whether or not the compensation or insurance to be paid under the present laws relating to