

"The phrase 'such liens', as used in Section 13435-7, General Code, refers to the lien described with particularity in the former part of the section and therefore the Legislature, by its language employed, failed to provide a fee for recording, filing, indexing and canceling the same."

I concur in this conclusion and approve the following language found in the body of the opinion at page 1260:

"Without undertaking to discuss the many decisions upon the interpretation of the word 'such', it is believed sufficient to state that the natural import of the word when used in a statute is to limit the application to a person or thing previously mentioned, in the absence of something to show that it is not used for the purposes of comparison as to quality or character. *Integrity Mutual Insurance Company vs. Bois*, 127 N. E. 748. In other words, where the Legislature has with particularity set out a description of a definite or certain thing, such as the lien mentioned in the statute under consideration, and then refers to 'such lien,' it is believed that a fair interpretation is to limit the word 'such' to the particular lien mentioned. If the Legislature had intended that fees for similar or like services were to be charged, it could have very easily used appropriate language to convey such intent."

As pointed out by my predecessor, if the statute would authorize the recorder to collect the fee from the county treasurer, he would be required to return the fee to the treasurer by virtue of the provisions of section 2983. This section requires each county officer to pay into the county treasury all fees, costs and penalties collected by his office, and further expressly provides that no officer shall collect any fees from the county. It is apparent that the financial status of the county will not be affected by the failure to collect the fee.

Being of the opinion that no fee may be charged under section 13435-7, it becomes unnecessary to answer your fourth question.

Specifically referring to your inquiry, I am of the opinion that,

1. The county recorder has no duty to actually copy or record in a book either the notices of lien prescribed by section 13435-5 or the notices of discharge of such lien prescribed by section 13435-6, the only requirement being that the recorder shall index all such notices in a book or record as they are filed in his office.

2. The legislature by its language has failed to provide a fee for filing, indexing and canceling such liens.

Respectfully,

JOHN W. BRICKER,
Attorney General.

169.

PRIVATE COUNSEL—ENGAGED TO PROSECUTE A PROCEEDING TO REMOVE A TOWNSHIP TRUSTEE—NEITHER TOWNSHIP NOR COUNTY MAY PAY FOR SUCH SERVICES.

SYLLABUS:

1. *Where a proceeding was instituted under section 10-1, et seq., of the General Code, for the removal of a township trustee in which such officer was*

removed by the Common Pleas Court, the township trustees had no authority to employ an attorney to prosecute such a proceeding and pay for his services out of township funds.

2. *In such a case, the county commissioners have no authority to pay attorney fees for prosecuting the same.*

COLUMBUS, OHIO, February 25, 1933.

HON. CALVIN CRAWFORD, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads in part as follows:

“Several months ago proceedings were instituted under section 10-1 et seq. for the removal of a township trustee, and upon a hearing duly had in the Common Pleas Court, as provided in said sections, a judgment of ouster was issued against said trustee. Before the proceedings were initiated, the other two members of the board of trustees passed a resolution to the effect that such proceedings should be prosecuted against the accused trustee because of his alleged misfeasance and malfeasance in office, and the two trustees who voted for said resolution also signed the petition or complaint against the other trustee. The petition was signed by more than ten per cent of the electors, as provided in section 10-2.

When the trustees passed the resolution above mentioned, it was also provided in the resolution that a certain attorney should be employed to prosecute, and that he should be paid the sum of \$300.00 for services thereby rendered, which were, in fact, rendered by said attorney.

The question upon which we desire your opinion is first, whether or not the trustees can legally pay said attorney fee of \$300.00. Second, if they cannot legally pay said fee, can the county commissioners allow and pay same under section 10-3 of the General Code?

Sections 10-1 to 10-4, both inclusive, of the General Code, provide for proceedings for the removal of a public officer on the grounds specified therein. Section 10-2, General Code, provides that such proceedings shall be commenced by the filing of a complaint in court signed by ten per cent of the qualified electors, as shown by the next preceding election of the political subdivision or unit of government whose officer is sought to be removed, a copy of which complaint is to be served upon such officer at least ten days before the hearing thereon. This section also provides for a formal hearing in court on said complaint. Section 10-4, General Code, provides for the review of said proceedings in the Court of Appeals and Supreme Court. Section 10-3, General Code, reads as follows:

“The court may suspend the officer pending such investigation. The court of common pleas, or the court of appeals is authorized to subpoena witnesses, and compel their attendance in the same manner as said court is now authorized in civil cases, process to be served by the sheriff of the county in which the witness resides.

The witness fees and other fees in connection with the removal proceedings hereunder or under sections 4367 of (or) 6212-34 of the

General Code shall be the same as in civil cases, and the expenses incurred in any of said removal proceedings shall be paid out of the general revenue fund of the county."

Section 2917, General Code, provides that the prosecuting attorney "shall be the legal adviser for all township officers, and no such officer may employ other counsel or attorney except on the order of the township trustees duly entered upon their journal, in which the compensation to be paid for such legal services shall be fixed."

I find no statutory provision imposing upon the prosecuting attorney the duty of prosecuting proceedings commenced under the provisions of sections 10-1, et seq., General Code, and in this case it appears that the trustees passed the resolution required by section 2917 for the employment of counsel. However, this section can refer only to such legal services as may be required by a township officer in connection with his official duties. The two township trustees in signing the complaint asking for the removal of the other trustee, and in taking the initiative in said proceeding, were acting only as electors of the township rather than in their official capacity. I am of the view, therefore, that they had no authority to employ counsel to prosecute such proceedings and to charge the township therewith.

Attorney fees cannot be taxed as part of the court costs except by express statutory authority. *Koelble vs. Runyan*, 25 O. A. 426. While section 10-4, General Code, authorizes the payment from the general fund of the county of the expenses incurred in such proceedings, I am of the view that this provision does not include the fees of the attorney employed either by the prosecution or by the defense, and that county commissioners have no authority to pay the same from county funds.

Respectfully,

JOHN W. BRICKER,
Attorney General.

170.

SOLDIERS' RELIEF—LEGISLATURE MAY PLACE RESTRICTIONS ON THE EXPENDITURE OF FUNDS APPROPRIATED—TIME OF FILING CLAIM MAY BE LIMITED.

SYLLABUS:

The legislature, in making a specific appropriation for the payment of compensation to World War Veterans, may place such restrictions and limitations on the expenditure of the funds so appropriated, with respect to the manner of receiving, approving and paying claims for such compensation as it may, in its discretion see fit to make.

COLUMBUS, OHIO, February 25, 1933.

HON. J. T. ROBERTS, *Commissioner of Soldiers' Claims, State House, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your inquiry relating to the action of the 89th General Assembly in making an appropriation for the further payment of claims for "adjusted compensation" for World War Veterans.