

amount allotted to any class from the class to which it was originally so allotted to any class with a longer maturity and, upon such transfer, the amount expended for any purpose or purposes falling within the class to which such transfer has been authorized may include the amount so transferred; but no transfer may be made from any class to a class with a shorter maturity."

Since the issuing of notes is the incurring of indebtedness, the issuing of same are subject to the provisions of section 2295-10 G. C.

The object of the so-called Griswold Act was to eventually abolish the sinking fund trustees by making all indebtedness mature serially, and as the "bonds or notes" issued under section 5655-3 G. C., are made serial obligations, it is believed that the use of the word "notes" is practically the same as bonds.

The words "issued or sold in the manner provided by law" must refer to the manner in which "serial bonds" are issued, for certainly if in the issuance of bonds under this section the formalities must be observed, the same would be true of notes.

It is therefore my opinion that notes issued by school districts under House Bill No. 599 must be issued with all the formalities and subject to the restrictions that serial bonds are under the Griswold Act. It is believed that this answer will make unnecessary the answering of the specific questions asked by you.

Respectfully;

C. C. CRABBE,
Attorney-General.

940.

STENOGRAPHERS APPOINTED BY COURT OF APPEALS UNDER SECTIONS 1520 AND 1521, G. C., SHOULD BE PAID FROM STATE TREASURY.

SYLLABUS:—

Stenographers appointed by the court of appeals under the provisions of sections 1520 and 1521, General Code, may not legally be paid from the county treasury, but their salary or per diem should be paid from the state treasury upon the certification of the presiding judge of the court of appeals.

COLUMBUS, OHIO, November 30, 1923

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

GENTLEMEN:—This will acknowledge receipt of your recent letter requesting my opinion as follows:

"Sections 1520 and 1521 of the General Code, as amended in 103 O. L., 412, govern the appointment and compensation of official stenographers to the court of appeals, and section 1521 G. C. provides that:

"The compensation of such stenographer shall be fixed by the court and be payable from the state treasury upon the certificate of presiding judge of the district in which he serves."

In some counties, stenographers being appointed for cases upon appeals, and the attorneys desiring a record made of the testimony of the proceedings, under order of the judges of the court of appeals whatever services the stenographers performed were charged up in the case as part of the costs, which, of course, would come back to the county as there is always an appeal

bond given in cases appealed, the stenographers so appointed drew compensation from the county instead of from the \$1,800.00 provided by law (section 1521 G. C.), for such services payable from the state treasury. In such instances our examiners have been making findings in favor of the county.

"Can stenographers appointed by the court of appeals under the provisions of sections 1520 and 1521 General Code legally be paid from the county treasury in above described instances, and if not, should examiners of this department make finding for recovery?"

Sections 1520 and 1521 of the General Code provide as follows:

Section 1520:

"Each court of appeals may appoint one or more official stenographers. They shall take an oath of office, serve at the pleasure of the court, perform such duties as the court directs, and have such powers as are vested in official stenographers of the common pleas court. Provided, however, that whenever an opinion, per curiam or report of a case has been prepared in accordance with section 1483 of the General Code as herein amended, it shall be the duty of the official stenographer to immediately forward one copy of such opinion, per curiam or report to the reporter of the supreme court, without cost or expense to the supreme court reporter."

Section 1521:

"The compensation of such stenographer shall be fixed by the court and be payable from the state treasury upon the certificate of the presiding judge of the district in which he serves. The total compensation paid to stenographers in any district in a year shall not exceed the sum of eighteen hundred dollars. Such stenographers shall also receive their actual expenses for traveling when attending court in any county other than that in which they reside, to be paid in like manner; and in no event shall such expense exceed three hundred dollars in a year."

The language taken from the above section 1520: "They shall take an oath of office, serve at the pleasure of the court, perform such duties as the court directs, and *have such powers* as are vested in official stenographers of the common pleas court" has probably led to some confusion in certain districts of Ohio.

It is significant that the language gives to stenographers "such powers" but nowhere attempts to give them the *rights* given to stenographers in the common pleas court.

Section 1521 above mentioned, governing the compensation of such stenographers is clear and unequivocal in its terms providing that the compensation is limited to eighteen hundred dollars in amount in any given year, and is payable from the *state treasury*. It also provides that the actual expenses of stenographers for "traveling when attending court in any county other than that in which they reside, to be paid in like manner," not exceeding three hundred dollars in any given year.

In the case of *Clark v. Commissioners*, 58 O. S., 109, Burket, J., expressing the opinion of the court, used the following language:

"It is well settled that a public officer is not entitled to receive pay for services out of the public treasury, unless there is some statute authorizing the same. Services performed for the public, where no provision is made by

statute for payment, are regarded as a gratuity, or as being compensated by the fees, privileges and emoluments accruing to such officer in the matters pertaining to his office. *Jones v. Commissioners*, 57 Ohio St., 189. To warrant payment out of the public treasury, it must appear that such payment is authorized by statute. Section 5, Article 10, of the Constitution. *Diebolt v. Trustees*, 7 Ohio St., 237; *Anderson v. Commissioners*, 25 Ohio St., 13; *Strawn v. Commissioners*, 47 Ohio St., 404."

And again our Supreme Court in 101 O. S., 477, announced the law of Ohio as follows:

"As said by Bradbury, J., in *Strawn v. Commissioners of Columbiana County*, 47 Ohio St., 404, at page 408: 'The fact that a duty is imposed upon a public officer will not be enough to charge the public with an obligation to pay for its performance, for the legislature may deem the duties imposed to be fully compensated by the privileges and other emoluments belonging to the office.' That case is commented on with approval by Judge Spear in *Jones, Auditor, v. Commissioners of Lucas County*, 57 Ohio St., 189, 209, which is likewise approved in *Clark v. Board of County Commissioners of Lucas County*, 58 Ohio St., 107, 109. To the same effect is *State ex rel. Enos v. Stone*, 92 Ohio St., 63."

The fees for stenographers' services and the compensation of stenographers in the common pleas court, as well as their powers, duties and rights, are set forth in sections 1549 and 1550 of the General Code.

An examination of sections 1520 and 1521 G. C. governing the appointment of stenographers in the court of appeals, together with sections 1549 and 1550 of the General Code governing the appointment of official stenographers in the common pleas court fails to disclose any relation existing between the two statutory provisions. In the first place the compensation is in different amounts, and in the second place the methods of payment are different, that for the court of appeals being paid from the *state treasury* upon the certificate of the presiding judge of the court of appeals, and that of the stenographer of the common pleas court is payable upon the warrant of the county auditor out of the *county treasury*, in monthly installments, when the compensation is allowed annually, and when in cases of services by per diem, for the amount of the bill approved by the court.

Specifically answering your inquiry, it is my opinion that stenographers appointed by the court of appeals under the provisions of sections 1520 and 1521, General Code, may not legally be paid from the county treasury, but that the same should be paid from the state treasury as above stated, and that you are therefore justified in making your finding accordingly.

Respectfully,

C. C. CRABBE,
Attorney-General.