

No.	Name	Acres
971	J. S. Cochran, Butler county, Hanover and Ross townships-----	264
972	Grant Dare, Butler county, Hanover and Ross townships-----	65
973	Taylor Cochran, Butler county, Hanover and Ross townships----	193
974	C. R. and C. H. Hine, Butler county, Hanover and Ross townships	177
975	C. S. Merryman, Guernsey county, Oxford township-----	90
976	R. C. and J. F. Smith, Guernsey county, Oxford township-----	185
977	J. F. Smith, Guernsey county, Oxford township-----	78
978	Miami Conserv. Dist., Montgomery county, Wayne township----	1,222

I have examined said leases, find them correct as to form, except Lease No. 974 and I am therefore returning the same with my approval endorsed thereon.

I am returning herewith Lease No. 974 unapproved, for correction, for the following reasons:

1. C. R. and C. H. Hine appear as lessors, while C. R. and C. Hine and C. R. Hine sign said lease as lessors. The signature of C. H. Hine does not appear thereon.
2. The acknowledgment is defective in that the name of C. H. Hine does not appear in the acknowledgment clause but does appear in the granting clause.

I suggest that State Game Refuge Order No. 978 and the duplicates thereof attached to Lease No. 978 be corrected to show the proper date on which said lease is to commence, to-wit: May 1st, 1927, and to end, to-wit: May 1st, 1932. In some of the copies of Lease No. 978 the term of years for which said lease is to continue, to-wit: five years, is omitted and should be inserted on said copies.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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#### HABEAS CORPUS—PAYMENT OF COSTS.

##### SYLLABUS:

*By the provisions of Section 12189, General Code, when a prisoner is discharged upon habeas corpus, the costs shall be taxed to the state and paid out of the county treasury upon the warrant of the county auditor of the county in which such proceeding was had.*

COLUMBUS, OHIO, May 14, 1927.

HON. RICHARD C. THRALL, *Prosecuting Attorney, Marysville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date, which reads as follows:

“I would like to have your ruling upon the proper meaning of Section 12189 of the General Code.

We have quite a few habeas corpus cases in regard to women confined in the Women's Reformatory. Who should pay the costs where relator is

discharged? Section 12189 provided that the costs be collected as a part of the original costs of the case and also that they be taxed against the State of Ohio and paid out of the county treasury upon warrant of the auditor. Which county pays?"

The question that you present is: When a petitioner prosecutes a writ of habeas corpus, and the writ is granted, and the petitioner discharged from confinement, who should pay the costs?

The answer to your inquiry is found in the following sections of the General Code, which provide in part as follows:

"Sec. 12180. \* \* \* upon the final disposition of a case the court or judge shall make such order as to costs as it requires."

"Sec. 12189. The fees of officers and witnesses shall be taxed by the judge, on return of the proceedings on the writ, and collected as a part of the original costs in the case. When the prisoner is discharged, the costs shall be taxed to the state and paid out of the county treasury upon the warrant of the county auditor. \* \* \* "

One of the incidents in connection with the prosecution of a writ of habeas corpus is the costs that necessarily accrue during the proceeding.

As provided in Section 12189, supra, "when the prisoner is discharged, *the costs shall be taxed to the state, and paid out of the county treasury* upon the warrant of the county auditor."

Your attention is directed to a former opinion of this office which appears in Annual Report of the Attorney General for 1912, Vol. II, page 982, the syllabus of which reads:

"Under Section 12189, General Code, the costs of a habeas corpus proceeding for release of an inmate of the Cleveland state hospital, are chargeable to the state and the superintendent of said hospital may, therefore, not be held for the same."

In this opinion the question presented was whether the costs in a habeas corpus proceeding for the release of an inmate of the Cleveland State Hospital, resulting in the discharge of the inmate by the court, could be assessed against the superintendent. After quoting Section 12189, supra, the opinion concludes as follows:

"Therefore, the costs in the proceeding referred to by you cannot be taxed against you personally or against you as superintendent of the institution, but *must be paid out of the treasury of Cuyahoga county.*"

I am of the opinion that when a prisoner is discharged upon a writ of habeas corpus the court or judge who grants the writ shall order that the costs shall be taxed against the state. As provided in Section 12189, supra, such costs should be paid out of the county treasury of the county in which the proceedings were had upon the warrant of the county auditor of such county.

Such county then has a claim against the state for the amount of the costs paid. However, there is no specific appropriation or fund out of which such reimbursement can immediately be made, although such county may keep a record of such expenditures for costs and present its claim for allowance thereof to the legislature.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*