

pletion of Electrical Contract (Item XIX, together with Alternate No. 1) for a project known as Addition to Mack Hall on the Campus of Ohio State University, in accordance with the form of proposal dated June 6, 1934. Said contract calls for an expenditure of Four thousand one hundred and thirty-four dollars (\$4,134.00).

You have submitted the certificate of the Auditor of State, showing that there are available moneys from the special trust fund for Dormitory purposes of Ohio State University, which moneys when supplemented by the moneys from the Federal Government will be sufficient to cover the cost of erection of the improvement. You have also shown that the Board of Trustees of Ohio State University has authorized the construction of this project. In addition, you have submitted a contract bond upon which the New Amsterdam Casualty Company of New York, appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence, indicating that plans were properly prepared and approved, notice to bidders was given, bids tabulated as required by law and the contract duly awarded. Also, it appears that the laws relating to the status of surety companies and the Workmen's Compensation Act have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

2878.

JUDGE—COURT OF COMMON PLEAS ENTITLED TO NECESSARY EXPENSES WHILE SERVING IN COUNTY OTHER THAN RESIDENCE UNDER CONSERVANCY ACT OF OHIO—ADDITIONAL COMPENSATION ALLOWED ONLY UNDER SECTION 2253, GENERAL CODE.

SYLLABUS:

1. *There is no statutory provision authorizing the payment to a common pleas judge of additional compensation for any services rendered by him in a county other than that of his actual residence than that provided in Section 2253, General Code.*

2. *A common pleas judge, when sitting as a court or a part thereof, in a county other than that of his residence pursuant to the provisions of the Conservancy Act of Ohio (Sections 6828-1 to 6828-79, both inclusive, General Code), may be paid his necessary expenses.*

COLUMBUS, OHIO, July 2, 1934.

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

GENTLEMEN:—Your recent request for opinion reads:

"Sections 6828-1 et seq., of the General Code, are known as the Conservancy Act, and place certain duties upon the judges of the Common Pleas Court in any county in which the district or any part thereof is located.

In the Muskingum Valley Conservancy District there are thirteen counties in which a part of the district is located, and the judges of each of such counties have definite jurisdiction.

QUESTION: May the Common Pleas Judges receive compensation or expenses in performing their duties in connection with this Conservancy District?"

Section 6828-2, General Code, one of the sections of the Conservancy Act of Ohio, places certain duties upon the Court of Common Pleas with reference to the establishment of Conservancy Districts. Such section reads:

"The court of common pleas of any county in this state, or any judge thereof in vacation, is hereby vested with jurisdiction, power and authority, when the conditions stated in the third section of this act (G. C. §§6828-1 to 6828-79) are found to exist, to establish conservancy districts, which may be entirely within, or partly within and partly without, the county in which said court is located, for all or any of these purposes:

- (a) of preventing floods;
- (b) of regulating stream channels by changing, widening and deepening the same;
- (c) of reclaiming or of filling wet and overflowed lands;
- (d) of providing for irrigation where it may be needed;
- (e) of regulating the flow of streams;
- (f) of diverting, or in whole or in part eliminating watercourses; and incident to such purposes and to enable their accomplishment, to straighten, widen, deepen, change, divert, or change the course or terminus of, any natural or artificial watercourse; to build reservoirs, canals, levees, walls, embankments, bridges or dams; to maintain, operate and repair any of the construction herein named; and to do all other things necessary for the fulfillment of the purposes of this act."

Sections 6828-3, 6828-4 and 6828-5, General Code, provide the method of giving such court jurisdiction, that is, by the filing of a petition in one of the counties composing such district.

Section 6828-6, General Code, provides for the filing of an answer by interested persons who may object to the granting of the prayer of the petition. Such section further provides for a hearing in such county by a common pleas judge from each county. If the majority of the court at such hearing finds the facts and conditions as specified in such section to exist, such court shall grant a decree which, in effect, creates such quasi corporation or sanitary district having the powers set forth in such Conservancy Act of Ohio. (§§6824-1 to 6824-79, both inclusive, General Code). Otherwise, he shall dismiss the petition. (§6828-6, General Code.)

It is necessary to examine the provisions of such act for the purpose of determining the provisions for the payment of the costs of such action. Section

6828-4, General Code, requires a bond from the petitioners for the payment of "the expenses connected with the proceeding in the case the court refuses to organize the district." Such section reads:

"At the time of filing the petition, or at any time subsequent thereto and prior to the time of the hearing on said petition, a bond shall be filed, with security approved by the court, sufficient to pay all the expenses connected with the proceeding in case the court refuses to organize the district. If at any time during the proceeding the court shall be satisfied that the bond first executed is insufficient in amount, it may require the execution of an additional bond within a time to be fixed to be not less than ten days distant, and upon failure of the petitioners to execute the same the petition shall be dismissed."

Section 6828-6, General Code, provides that in the event that the court dismisses the petition he shall adjudge the costs against the petitioners.

Section 6828-43, General Code, sets forth the provisions of the act for the payment of the costs of the action in the first instance and the manner of recoupment. In so far as material to your inquiry, such section reads:

"After the filing of a petition under this act (G. C. §§6828-1 to 6828-79), and before the district shall be organized, the costs of publication and other official costs of the proceedings shall be paid out of the general funds of the county in which the petition is pending. Such payment shall be made on the warrant of the auditor on the order of the court. In case the district is organized, such cost shall be repaid to the county out of the first funds received by the district through levying taxes or assessments or selling of bonds, or the borrowing of money. If the district is not organized, then the cost shall be collected from the petitioners or their bondsmen. Upon the organization of the district, the court shall make an order indicating a preliminary division of the preliminary expenses between the counties included in the district in approximately the proportions of interest of the various counties as may be estimated by said court. And the court shall issue an order to the auditor of each county to issue his warrant upon the treasurer of his county to reimburse the county having paid the total cost."

I find no provision in such act specifying the costs which may or may not be paid to the court. However, general provisions of the statutes provide for certain fees in connection with a case in the common pleas court. The fees of the clerk of courts in the docketing, etc., of each case are set forth in Sections 2900 and 2901, General Code.

The fees of a sheriff in the service of process and subpoenaing of witnesses are set forth in Section 2845, General Code.

The compensation of a common pleas judge is provided for, and fixed by statute. In Section 2252, General Code, he is granted additional salary computed as follows: .03 per capita for the first 50,000 population of his county as of the time of his election, as determined by the last federal census; .04 per capita of the excess from 50,000 up to 100,000; .04-1/3 from 100,000 to 180,000 and .00-1/3 per capita in excess of such amount, but such additional compensation shall not exceed \$9,000.00.

In Section 2253, General Code, provision is made for the payment of certain additional compensation and expenses in certain cases. Such section reads:

"In addition to the annual salary and expenses provided for in sections 1529, 2251, 2252, 2252-1, each judge of the court of common pleas while holding court in a county in which he does not reside, by assignment of the chief justice under section 1687 of the General Code, or without any assignment, shall receive his actual and necessary expenses incurred while so holding court in a county in which he does not reside, to be paid from the treasury of such county upon the warrant of the county auditor, issued to such judge; each judge of the court of common pleas who is assigned by the chief justice by virtue of section 1469 of the General Code, to aid in disposing of business of some county other than that in which he resides, shall receive ten dollars per day for each day of such assignment and the sum of not more than six dollars per day for his actual and necessary expenses incurred in holding court under such assignment, together with his actual transportation expenses, to be paid from the treasury of the county to which he is so assigned upon the warrant of the auditor of such county."

From an examination of such section it is apparent that:

(a) A common pleas judge sitting as a court by designation in a county other than that of his residence may be paid his actual expenses so incurred not exceeding six dollars per day and additional compensation of ten dollars per day.

(b) A common pleas judge sitting as a court in a county other than that of his residence, without any assignment, may be paid his expenses incurred while so sitting.

You will note that such section provides for additional compensation for a judge when sitting as a court in a county other than that of his residence, by designation, but does not provide for such additional compensation when sitting without such designation. The first part of such section provides that a judge sitting in a county other than that of his residence shall be paid his expenses while so sitting whether by designation or otherwise. The latter part of such section specifically limits the maximum amount of such expenses that may be paid to a judge sitting by designation to \$6.00 per day but makes no such maximum limitation on the expenses that may be allowed when so sitting without such designation.

Section 2259, General Code, in so far as is relevant to your inquiry, reads:

"No fees whatever in addition to the salaries and compensation named in the preceding sections of this chapter shall be allowed to any such officer. No additional remuneration whatever shall be given any such officer under any other title than that by which he was elected or duly appointed."

Section 14 of Article IV of the Ohio Constitution, provides that judges of the court of common pleas "shall * * receive such compensation as may be provided by law * *; but they shall receive no fees or perquisites * * under authority of this state, or of the United States."

The sections above set forth provide the full compensation of a common pleas judge. It would therefore appear that a common pleas judge cannot re-

ceive any further sum *as compensation* for services performed by him. My examination of the statute fails to disclose any provision of statute specifically providing for the payment of the expenses of a judge while performing his services in his own county.

I am unable to find any provision of the General Code specifically authorizing the payment of the expenses of a common pleas judge when performing his official duties whether in his county or elsewhere, except as set forth in such Section 2253, General Code.

There is a general rule of statutory interpretation that the express mention of one thing or consequence is tantamount to an express exclusion of all others.

State ex rel. Schmidt vs. Harter, 43 O. App. 503;
Jones vs. Crosswell, 60 Fed., 2nd, 827;
Springer vs. Phillipine Islands, 277 U. S., 189;
 Black, Interpretation of Laws, §64.

Since the legislature has specifically authorized only the payment of additional compensation to a common pleas judge when he is assigned to judicial duties in another county than his own, if we apply such rule above stated, it would appear that your query as to additional compensation should be answered in the negative.

It is therefore my opinion that:

1. There is no statutory provision authorizing the payment to a common pleas judge of additional compensation for any services rendered by him in a county other than that of his actual residence than that provided in Section 2253, General Code.
2. A common pleas judge, when sitting as a court or a part thereof, in a county other than that of his residence pursuant to the provisions of the Conservancy Act of Ohio (Sections 6828-1 to 6828-79, both inclusive, General Code), may be paid his necessary expenses.

Respectfully,
 JOHN W. BRICKER,
 Attorney General.

2879.

SPECIAL ASSESSMENT—MUNICIPAL BONDS ISSUED IN ANTICIPATION OF COLLECTION OF SPECIAL ASSESSMENTS MAY BE USED IN PAYMENT OF SPECIAL ASSESSMENTS DUE MUNICIPALITY WHEN.

SYLLABUS:

Bonds issued by a municipality in anticipation of the collection of special assessments, which bonds were due and payable on January 1, 1933, may be used, subject to the provisions of House Bill No. 94 of the 90th General Assembly,