

of the contents and purpose of such proposed law or amendment he shall so certify. Such synopsis together with the Attorney General's certification may be printed in capital letters immediately following the notice provided for in Section 5175-29f. The text of the proposed law or amendment shall be printed in full at the end of each part of the petition."

After examining the provisions of the proposed act it is my opinion that said synopsis is a fair and impartial statement of the proposed law, and I therefore as Attorney General of Ohio, in pursuance to the provisions of said Section 5175-29e, hereby certify that the foregoing synopsis is a truthful statement of contents and purposes of said proposed bill.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2707.

INSOLVENTS—COMMISSIONER OF—COMPENSATION FIXED BY
COURT—PAYABLE BY INSOLVENT.

SYLLABUS:

The compensation of a commissioner of insolvents, allowed by the court by authority of Section 11179, General Code, must be paid by the applicant for relief, who makes an assignment to avoid arrest, by authority of Section 11146, et seq. of the General Code.

COLUMBUS, OHIO, October 13, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion as follows:

"You are respectfully requested to render this department your written opinion upon the following:

Section 11179, General Code, provides for allowances for services of a commissioner of insolvents and provides that for services not specified, 'such reasonable compensation to be fixed by the court.'

Question: In what manner is this compensation to be fixed by the court to be paid and by whom?"

By the terms of Section 11146, et seq. of the General Code, provisions are made for the appointment and duties of a commissioner of insolvents to be appointed by the Probate Court in each county. Such commissioner shall give bond and hold his office for a term of three years unless sooner removed by the court. He shall keep his office at the county seat and shall receive applications and grant certificates of compliance to persons applying for and entitled to relief under the law relating to insolvent debtors who make assignments to avoid arrest.

Such an applicant is required to file with the commissioner an accurate schedule of all his debts and liabilities, and also a schedule in writing of all his assets. He must also assign to the commissioner all his property, rights and credits of every kind and

description except only exempted property or rights. The commissioner is authorized and directed as assignee to administer such property and rights of his assignor for the best interests of all parties concerned.

After the applicant has filed his schedule of assets and liabilities and submitted himself to examination with respect thereto, the commissioner shall give him a certificate of his having done so. Thereupon, the commissioner shall before the third Monday after the granting of such certificate return the proceedings so far taken to the Probate Court. The court shall thereupon enter the case on his docket and file all papers in the matter for the inspection of any person interested. On such third Monday or next day, or any day prior thereto, the applicant shall file his petition in the court, setting forth his application to the commissioner, and praying to be released from liability to arrest for any debt or claim named in his schedule of debts. Hearing shall subsequently be held upon said petition, and any creditor is authorized to resist the same. The court is authorized, upon the final hearing of the petition, to hear any evidence material to the issues and may grant the petitioner a certificate as prayed for or dismiss his petition as seems just. Sections 11172 and 11179, General Code, read as follows:

Sec. 11172. "When the court dismisses the petition of a person applying for relief, judgment must be rendered against the petitioner for the costs that have accrued on his behalf, except such as have been paid by him to the commissioner, and also in resisting it. When the court grants the petitioner the relief prayed, judgment shall be rendered against him for the costs before the commissioner, and in the court on his part and not before paid. The creditors resisting such petition, and failing, must pay their own costs. Costs shall be taxed as in other cases and may be collected by the execution. The court also may order that the final certificate be not delivered until the petitioner pays the costs taxed against him."

Sec. 11179. "The commissioner shall be entitled to the following fees: for writing the application and bond, each, twenty-five cents; for the inventories, schedules, and assignments, and for the examination at the time of application, and for copies thereof, ten cents per hundred words; for publishing notice, twenty-five cents, in addition to the amount paid to the printer; all of which he shall have a right to receive before he may be required to give a certificate to the applicant. For all other services he shall be entitled to receive a reasonable compensation, to be fixed by the court."

It is apparent from the foregoing, that a commissioner of insolvents in the administration of the estate of an applicant under the insolvent debtor's law, has many things to do for which no specific fee is provided as are those in Section 11179, *supra*. In fact the commissioner in the collection and disbursement of the assets of his assignor, stands in very much the same relation to his assignor's estate as does an administrator or executor to the estate of his decedent, or a receiver appointed by a court to the assets of a corporation or partnership for which he has been appointed receiver. It was no doubt for the purpose of compensating the commissioner for these services that the provision was made authorizing the court, who was in a position to judge of their value, to make an extra allowance for the commissioner.

There is no provision whereby the commissioner is paid from public funds, and it is apparent that the specific fees provided for the commissioner by Section 11179, General Code, are to be taxed as costs which must be paid by the applicant for a certificate before he is entitled to such certificate. In my opinion allowances made

by the court for extra services should also be taxed as costs and paid by the person applying for relief.

I am therefore of the opinion, in specific answer to your question, that the compensation of a commissioner of insolvents, allowed by the court by authority of Section 11179, General Code, must be paid by the applicant for relief, who makes an assignment to avoid arrest by authority of Section 11146, et seq. of the General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2708.

TAX AND TAXATION—COUNTY COMMISSIONERS CANNOT BORROW MONEY IN ANTICIPATION OF FEBRUARY, 1928, TAX SETTLEMENT TO PAY FOR 1927 ROAD CONTRACT.

SYLLABUS:

1. *County commissioners are without power to borrow money and issue notes therefor in anticipation of the February tax settlement, before January first of the year of such tax settlement.*

2. *Where appropriations made by county commissioners for road purposes for the fiscal year have been exhausted, it is unlawful for such commissioners to enter into a contract for work to be performed during such fiscal year, and to provide in such contract that the contractors shall be paid from the proceeds of the December tax collection.*

COLUMBUS, OHIO, October 13, 1928.

HON. W. M. MCKENZIE, *Prosecuting Attorney, Chillicothe, Ohio.*

DEAR SIR:—This will acknowledge your recent communication as follows:

“During the year of 1928 the county commissioners of this county appropriated \$115,000 for road purposes. This was appropriated for various jobs. These appropriations have all been exhausted and there is no unappropriated balance in the road fund. I am advised by the county auditor, Mr. S., that he has advised them from time to time of the condition of the road fund. With all their funds appropriated, there are several miles of service treating which should have a second coat and for which they have never made any provisions.

The commissioners want to know if they can borrow the sum of \$10,000 to put on the coat or second treatment on the road. If this can not be done they want to know if the contractors were willing to wait for the money until December, could the December tax collection be used to pay these contractors.”

The first question asked is whether the commissioners may at this time borrow \$10,000 to complete the work, in view of the fact that the appropriations for the year 1928 have been exhausted. I assume that what you have in mind is whether the commissioners may issue notes and borrow money in anticipation of current revenues. In answering this question I believe it sufficient to quote the provisions of Section 2293-4 of the Code, which section is as follows: