

Touching the question here presented, said Section 11564, General Code, requires that with respect to a proceeding in error in the common pleas court of Miami County, to a judgment of the municipal court of Piqua, Ohio, on the ground that the verdict of the jury or the judgment of the court is against the weight of the evidence, or where the error assigned is that the court erred in its charge to the jury, or is predicated on some decision or ruling of the court in the trial of the case, not shown by journal entry, the party complaining or his counsel must prepare and file in said municipal court a bill of exceptions; and when the error claimed is that such verdict or judgment is against the weight of the evidence such bill of exceptions is required to contain all the evidence in the case.

It will be noted that the duty imposed by Section 11564, General Code, with respect to the matter of preparing and filing the bill of exceptions is one imposed upon the party; there is nothing in said section which imposes such duty upon the official stenographer of the court, although as a matter of practice it is quite usual for the official stenographer in the common pleas court to prepare such bill of exceptions on the request of a party or his counsel, and to make a charge therefor at the folio rate prescribed in Section 1552, General Code.

With respect to the question here presented, it is quite obvious that a party to a case, in the municipal court of Piqua, desiring to prepare and file a bill of exceptions therein with respect to a proceeding in error filed or to be filed in the common pleas court of Miami County, Ohio, may require a transcript of the official stenographer's notes of the evidence and proceedings in the trial of said case. In such case the party desiring such transcript for the purpose of the bill of exceptions is required to pay to the official stenographer of the municipal court of Piqua, his proper charges for the transcript so furnished; and, as provided by Section 1579-594, General Code, above quoted, the moneys received by the official stenographer of this court for such transcript are required to be paid over to the clerk of the court who, in turn, is required to account for the same in his official capacity.

In the preparation of a bill of exceptions there may be a small amount of stenographic and manual work other than that involved in transcribing the notes of the evidence and proceedings had on the trial of the case. Instead of performing such services himself the party or his counsel may, of course, have the official stenographer perform the same and pay therefor such compensation as may be agreed upon. Such compensation so paid to the official stenographer may be retained by such person; but clearly under the provisions of Section 1579-594, General Code, the official stenographer of the municipal court of Piqua does not have the right to retain for his own use moneys paid by a party in a case in said court or by his counsel for a transcript of the notes of said stenographer of the evidence and proceedings in the trial of a case, whether such a transcript is desired for the purpose of a bill of exceptions or otherwise.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2977.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN
LORAIN AND PICKAWAY COUNTIES.

COLUMBUS, OHIO, December 6, 1928.

HON. HARRY J. KIRK, *Director of Highways, Columbus, Ohio.*