

under Section 4696, General Code, as the date of its due legal acceptance, we must consider here the date of the transfer as being July 15, 1929, and the funds and indebtedness apportioned to the Hartford School District of the Licking County School District should be apportioned as though the territory transferred were still a part of Trenton Township School District of Delaware County as that district would have existed on July 15, 1929, considering its incorporation in a new district by the Delaware County Board of Education as being unauthorized and of no effect, so far as it affected the distribution of funds and indebtedness between it and the Hartford District of Licking County.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1948.

JURY FEES—NOT TAXABLE AS COSTS AGAINST DEFENDANT IN CRIMINAL CASE.

SYLLABUS:

The Legislature having failed to fix in Section 13451-18, General Code, the amount of jury fees which shall be included as costs, therefore, no authority exists to tax jury fees and include them in a judgment against the defendant in a criminal case.

COLUMBUS, OHIO, June 6, 1930.

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

DEAR SIR:—I am in receipt of your letter of recent date which is as follows:

"Section 13451-18 of the General Code provides that in sentence in a criminal case tried by a jury, a jury fee of \$----- should be included in the costs, which when collected should be paid into the Public Treasury from which the jury was paid.

In cases tried in the Common Pleas Court before a jury and in which the defendant was found guilty, what amount, if anything, should be taken from the defendant as jury fees?

Second, if such jury fee be taken against the defendant, who is found guilty and sentenced to the Penitentiary, should the State repay this amount?

We are somewhat uncertain as to the exact effect of this Section of law and would like your opinion on these two points of the matter."

Authority to include jury fees as costs which may be taxed and included in a judgment rendered against a defendant in a criminal case must come from the provisions of Section 13451-18, General Code, for this section is held to be inclusive and no further charge for jury fees may be taxed as costs in any criminal case. *State ex rel. Board of Commissioners of Gallia County vs. Board of Commissioners of Meigs County*, 14 O. C. C. 26.

Section 13451-18, General Code, provides as follows:

"In all sentences in criminal cases, including violations of ordinances, the judge or magistrate shall include therein, and render a judgment against the defendant for the costs of prosecution, and if a jury has been called to the trial of the case, a jury fee of \$----- shall be included in the costs,

which, when collected, shall be paid to the public treasury from which the jurors were paid."

Prior to the enactment of the Code of Criminal Procedure, Section 12375, General Code, read substantially the same as Section 13451-18, General Code, but provided that "a jury fee of six dollars shall be included in the costs", instead of as it now reads in Section 13451-18 that "a jury fee of \$----- should be included in the costs".

Two views present themselves as to the reason for the Legislature's omitting the amount, or rather in setting forth the amount as \$-----, in the provisions of Section 13451-18. One is that the Legislature set forth the amount in blank intentionally, because it was intended that the actual amount of jury fees expended should be taxed, and, this amount varying in each case, it could therefore not be definitely fixed. On the other hand, it may be said that it was omitted unintentionally through mistake or oversight. The former view does not seem tenable, for it may be assumed that if the Legislature intended that the actual amount of jury fees should be taxed it would have used more apt language. It would not have been necessary to fix a definite amount in the statute; it would have been sufficient merely to state "jury fees shall be included in the costs". The provision "a jury fee of \$-----" indicates that the Legislature had in mind a definite amount and it appears to me that the omission of the amount was made from oversight or mistake.

Since the Legislature failed to fix the amount of jury fees that may be taxed as costs in a criminal case, the courts cannot substitute such amount and therefore no authority exists to include jury fees as costs to be included in a judgment rendered against a defendant in a criminal case.

In the case of *Haserodt vs. State, ex rel.* 6 Ohio App. 354, the issue was raised as to what fees a chief of police was entitled to receive under a statute which provided that his fees should be the same as provided for constables and sheriffs in certain cases. It appeared that under such circumstances a constable received one fee, while the sheriff received another. In view of the two different provisions relative to the fees of the constable and the sheriff, the court held that the Legislature had failed to make any provision for fees for the chief of police in such cases because of the indefiniteness of the language used. It is believed that this case by analogy applies to the situation before me since the Legislature provided that jury fees may be taxed as costs, yet failed to fix the amount of fees to be taxed as costs.

In view of the discussion herein, I am of the opinion that the Legislature having failed to fix in Section 13451-18, General Code, the amount of jury fees which shall be included as costs, therefore, no authority exists to tax jury fees as costs and include them in a judgment against the defendant in a criminal case.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1949.

APPROVAL, ABSTRACT OF TITLE TO PREMISES OF BENJAMIN C. VAIL IN COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, June 6, 1930.

The State Office Building Commission, Columbus, Ohio.

GENTLEMEN:—There has been submitted for my examination and approval an