

nation of these two opinions it is my opinion that the thought therein expressed, namely, that Section 3019, General Code, requires an actual trial, resulting in the defendant being found not guilty of a felony, is sound.

In view of the above and without extending this discussion, it is my opinion:

1. The allowance provided in Section 3019, General Code, for a justice of the peace may not be paid in a felony case wherein the justice of the peace acts as an examining magistrate, and which results in the defendant being found guilty by the common pleas court and being put on probation.

2. County commissioners are unauthorized to make the statutory allowance provided in Section 3019, General Code, for a justice of the peace in misdemeanor cases where the defendant is found guilty by the common pleas court and put on probation without requiring the payment of costs, unless the county commissioners are satisfied the justice of the peace exercised reasonable care in requiring security for costs and unless the defendant is insolvent and such costs could not be collected from him by the proper legal proceedings.

3. In general, the phrase "In felonies wherein the state fails", refers to a situation wherein a defendant is actually tried for a felony which results in the acquittal of the defendant.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5365.

APPROVAL—PETITION CONTAINING A PROPOSED CONSTITUTIONAL AMENDMENT AND SUMMARY OF THE SAME.

COLUMBUS, OHIO, April 15, 1936.

MR. CHARLES H. HUBBELL, *10401 Almira Avenue, Cleveland, Ohio.*

DEAR SIR: You have submitted for my examination a written petition signed by one hundred qualified electors of this state containing a proposed constitutional amendment and a summary of the same under the provisions of Section 4785-175, General Code. It is proposed to amend the Constitution by the adoption of five new sections to be known as Sections 100a, 100b, 100c, 100d and 100e of Article I to read as follows:

"Section 100a. Subsequent to the first day of January next after the date this section becomes effective, unless another and

different allocation and apportionment shall be authorized by laws adopted by the people under the initiative provisions of this constitution or by emergency laws passed by the general assembly, all funds disbursed by the State of Ohio for public school purposes or school purposes (other than for state institutions) in any calendar year, shall be allocated to and apportioned among the school districts throughout the State in the ratio which the weighted attendance of teachers and pupils in the public schools and in approved free-tuition schools other than public schools in each of said school districts during the preceding calendar year bears to the weighted attendance of teachers and pupils in the public schools and in approved free-tuition schools other than public schools in all of said school districts during the preceding calendar year.

Section 100b. The term 'free-tuition school other than a public school' shall mean any school, other than a public school, having standardized requirements for certification of its teachers on file in the department of education of the State of Ohio, and which offers to children of school age in its immediate vicinity education in the subjects commonly included in elementary or high school courses, without charge for tuition.

Section 100c. If, prior to the first day of July in any year, there shall be filed with the Board of Elections in any county a petition signed by one thousand electors of said county and requesting that the question of the approval of any free-tuition school other than a public school located in said county be submitted to the electors of said county, the Board of Elections of said county shall submit such question to the electors therein at the general election held in said year. Ballots shall be prepared in such a manner as to enable electors to vote separately on each such school for which approval is sought. If any such school shall be approved, either by an affirmative majority of the votes cast on said question in said county at large or by an affirmative majority of the votes cast on said question in the school district in which such school is located, said school shall, during the next succeeding calendar year, be deemed to be an approved free-tuition school other than a public school.

Section 100d. The weighted attendance of teachers and pupils in any public school or in any approved free-tuition school other than a public school shall be the sum of the following three products: (a) the number of teachers, multiplied by the average number of half days of their attendance, multiplied by forty; (b) the number of high school pupils, multiplied by the

average number of half days of their attendance, multiplied by one and three-fourths; and (c) the number of elementary pupils, multiplied by the average number of half days of their attendance, multiplied by one and one-fourth.

The term 'high school pupil' shall mean a pupil who has completed eight years of elementary school work, and the term 'elementary pupil' shall mean a pupil who has not completed eight years of elementary school work.

Section 100e. Out of the funds allocated and apportioned to any school district there shall be paid quarterly to the fiscal officer of each approved free-tuition school other than a public school located in said school district the portion thereof based on the weighted attendance of teachers and pupils in said school. Funds so paid to any such fiscal officer shall be used only for school purposes. The accounts and records of the fiscal officer of each such school to whom public funds shall have been so paid shall be a public record open to inspection by any elector of the State of Ohio or by any other person, and shall be audited and examined in the same manner as the accounts and records of the Board of Education of the school district in which such school is located."

The summary of this admendment reads as follows:

"The proposed amendment provides that, unless another and different allocation and apportionment shall be authorized by laws adopted by the people or by emergency laws passed by the general assembly, all funds disbursed by the State of Ohio for public school purposes or school purposes (other than for state institutions) shall be allocated to and apportioned among the school districts of the State on the basis of the weighted attendance of teachers and pupils in the public schools and in approved free-tuition schools other than public schools in the various school districts in the State; defines the term free-tuition school other than a public school'; provides for the submission to the electors of any county the question of the approval of any free-tuition school other than a public school located therein; provides that, if any such school be approved by a majority of the votes in said county at large or in the school district in which it is located, it shall be deemed to be an approved free-tuition school other than a public school; sets forth the method of computing the weighted attendnace of teachers and pupils; provides that, out of the funds allocated and apportioned to any school

district, there shall be paid to the fiscal officer of each approved free-tuition school other than a public school located therein the portion thereof based on the weighted attendance of teachers and pupils in said school; provides that such funds shall be used only for school purposes; and provides that the accounts and records of each such fiscal officer shall be a public record open to inspection, and shall be audited and examined in the same manner as the accounts and records of the Board of Education of the school district in which such school is located."

I am of the opinion that the foregoing is a fair and truthful statement of the proposed constitutional amendment and accordingly submit for uses provided by law the following certification:

"Pursuant to the duties imposed upon me under the provisions of Section 4785-175, General Code, I hereby certify that the foregoing summary is a fair and truthful statement of the proposed amendment to the Constitution of Ohio by the addition to Article I of Sections 100a, 100b, 100c, 100d and 100e. JOH W. BRICKER, Attorney General."

Respectfully,

JOHN W. BRICKER,
Attorney General.

5366.

APPROVAL—BONDS OF CITY OF WARREN, TRUMBULL COUNTY, OHIO, \$7,000.00.

COLUMBUS, OHIO, April 16, 1936.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

5367.

APPROVAL—BONDS OF HOLGATE VILLAGE SCHOOL DISTRICT, HENRY COUNTY, OHIO, \$2,700.00.

COLUMBUS, OHIO, April 16, 1936.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.