

"No officer, whose compensation is regulated by fees, can charge for a particular service, unless the law specifically gives him fees for that service."

The same doctrine was applied in the case of *Jones, Aud. vs. Commissioners of Lucas County*, 57 O. S. 189, where the court stated on page 208:

"When to the foregoing we have added the rule, well established in this state, as held in *Debolt vs. The Trustees*, 7 Ohio St. 237, that 'an officer whose fees are regulated by statute, can charge fees for those services only to which compensation is by law affixed,' and the corollary, as held in *Anderson vs. Commissioners*, 25 Ohio St., 13, that 'where a service for the benefit of the public is required by law, and no provision for its payment is made, it must be regarded as gratuitous, and no claim for compensation can be enforced,' which rule is more fully stated, but to like import in *Strawn vs. Commissioners*, 47 Ohio St., at page 480, the conclusion inevitably follows, that the auditor's services in making the report for the commissioners must be deemed, if not gratuitous, at least satisfied by the salary attached to his office, and that he is not entitled to extra compensation for such services, payable out of the county treasury."

It is therefore my opinion, in specific answer to your question, that there is no statutory authority for a charge of fifty cents for the use of the official seal of the county recorder.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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BONDS—CONTINUE TO DRAW INTEREST WHEN NOT PAID AT MATURITY—NO EXCEPTION TO RULE WHEN FUNDS TO PAY SAME ARE IN CLOSED BANK OR DEFICIENCY EXISTS DUE TO NON-PAYMENT OF TAXES.

**SYLLABUS:**

*Bonds of a political subdivision not paid upon presentation at maturity continue to draw interest until they are paid regardless of the fact that the funds in such subdivision are on deposit in a closed bank, and it does not have sufficient funds to pay them at maturity due to the non-payment of taxes.*

COLUMBUS, OHIO, May 10, 1933.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads in part as follows:

"On September 20, 1932, your predecessor in office rendered an opinion to me upon the question of whether or not a political subdi-

vision must pay interest upon bonds between due date and date of payment.

The question now arises as to whether or not a political subdivision which has deposited funds in a bank which has limited withdrawals or which is closed for liquidation, may be compelled to pay interest upon bonds which have become due, between the maturity date and the date of actual payment.

In other words, will the fact that the funds are in a closed bank excuse the political subdivision from the payment of interest?

Further, will the fact that taxpayers who have not paid their taxes for the reason that their funds are on deposit in closed banks whereby the political subdivision does not have sufficient funds to pay bonds, excuse the political subdivision from the payment of interest between due date of the bonds and the time of actual payment?"

In the opinion to which you refer, my predecessor held that bonds which are not paid upon presentation at maturity continue to draw interest until they are paid. I concur in this opinion. A subdivision would not be excused from the payment of this interest unless the circumstances you relate would constitute a legal excuse for the non-performance of a contract. It has been held that performance is not excused by a subsequent inability to perform due to a financial stringency or stagnation of business. 13 C. J. 636.

In the case of *Pratt vs. McCoy*, 128 La. 570, the defaults of the plaintiff were sought to be excused on the plea that his inability to procure money was due entirely to the stringency of the money market, a panic being on at that time. The court held as follows:

"That it became difficult for plaintiff to secure money to advance to defendant to enable him to perform a construction contract, on account of the money market, would not excuse plaintiff's failure to advance the money as agreed."

In the case of *Ingham Lumber Company vs. Ingersoll*, 93 Ark. 447, the following was held:

"The fact that one of the parties to a contract, because of a financial stringency, is unable to get money to carry on his contract, does not excuse him from non-performance."

I am also of the view that the fact that a subdivision does not have sufficient funds to pay its bonds due to the non-payment of taxes is no legal excuse for non-performance of the contract of such subdivision to pay such bonds at maturity.

I am of the opinion therefore that bonds of a political subdivision not paid upon presentation at maturity continue to draw interest until they are paid regardless of the fact that the funds in such subdivision are on deposit in a closed bank, and it does not have sufficient funds to pay them at maturity due to the non-payment of taxes.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*