

5205.

JUSTICE OF THE PEACE—MAY IMPOSE COSTS OF PROSECUTION FOR CONVICTION UNDER SECTION 1437, GENERAL CODE.

SYLLABUS:

A justice of the peace who hears and determines a misdemeanor case involving the violation of Section 1437, General Code, not only may fine an offender within the limits prescribed by such statute, but also may impose the costs of prosecution, exclusive of jury fees.

COLUMBUS, OHIO, March 2, 1936.

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

GENTLEMEN: Receipt is acknowledged of your inquiry which reads as follows:

“A justice of the peace issued two warrants against a person, one for the offense of hunting on land without permission of the owner, under Section 1437, General Code, the penalty for which is provided in Section 1454, General Code, and the other for trespassing.

The justice fined the defendant total sum of \$15.00 in both cases, and costs.

Section 1454 provides that whoever violates the provisions of Section 1437 shall be fined not less than \$10.00 nor more than \$15.00 and for each subsequent offense shall be fined not less than \$15.00 nor more than \$50.00. It further provides that whoever violates the provisions of Sections 1414, 1415 and 1442 shall be fined not less than \$100.00 nor more than \$500.00 and costs of prosecution. The words, ‘cost of prosecution’ are not used with reference to violation of Section 1437.

QUESTION: May a justice of the peace fine a man within the limits prescribed by this section and the costs of prosecution for violation of Section 1437?”

It is true that the words “costs of prosecution” do not immediately follow the penal legislation in Section 1438 of the General Code. If this section stood alone, there might well be some doubt as to the authority of the justice of the peace to impose costs thereunder, even though supplemented by Section 1746, General Code, which provides a schedule of

fees that a justice of the peace may charge as costs. However, such is not the case.

Section 13451-18, General Code, reads 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.”

In an opinion rendered by my immediate predecessor (Opinions of the Attorney General for 1932, p. 1460), it is stated that in our code of criminal procedure, authority is given for taxing costs in all criminal proceedings against a defendant when he is convicted. (Sections 13451-9, 13454-2 and 13455-3, General Code). Other statutes discussed in that opinion seem to indicate a definite intention amply to protect a justice of the peace to the fullest consistent extent in the matter of costs of prosecution in every misdemeanor case. Since provisions for the assessment of costs in all criminal cases are specifically made, there is no necessity for the repetition of such provisions in Section 1437 to give validity to the judgment for costs and their omission is not of compelling significance.

As was said by the Court in *Ex Parte Clark*, 50 O. S., 649:

“We have not discovered that any of the sections of the statutes defining crimes and providing for their punishment by imprisonment in the penitentiary, contain a provision, which in terms authorizes the court to * * * render judgment against the defendant for costs, nor in view of section 6799 is it necessary they should, for by that, such authority is clearly conferred on the courts in all cases coming within its provisions.”

Revised Statutes Section 6799, *supra*, is substantially the same in its language as Section 13451-18, *supra*. Although some of the sections of the statutes defining misdemeanors and providing for their punishment may contain a provision with reference to costs, most of these sections contain no such provision. And the reasoning of the court as applied in the *Clark* case, *supra*, to cases of felonies is equally applicable, certainly, it would seem, to those involving misdemeanors.

Whether the cases to which you refer were tried by a jury does not appear from your communication. It was held in an opinion of this office, Opinions of the Attorney General for 1930, Vol. II, p. 865, that

the legislature having failed to fix in Section 13451-18, General Code, the amount of jury fees which should be included as costs, no authority existed to tax jury fees and include them in the judgment against the defendant in a criminal case. Therefore, if jury fees were attempted to be taxed as costs in the instant case, the justice of the peace did that for which no authority exists in law.

In specific answer to your question, it is my opinion that a justice of the peace who hears and determines a misdemeanor case involving the violation of Section 1437, General Code, not only may fine an offender within the limits prescribed by such statute, but also may impose the costs of prosecution, exclusive of jury fees.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5206.

APPROVAL—BONDS OF VILLAGE OF SHEFFIELD LAKE,
LORAIN COUNTY, OHIO, \$7,000.00.

COLUMBUS, OHIO, March 2, 1936.

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

5207.

APPROVAL—BONDS OF UHRICHSVILLE CITY SCHOOL
DISTRICT, TUSCARAWAS COUNTY, OHIO, \$25,000.00.

COLUMBUS, OHIO, March 2, 1936.

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

5208.

APPROVAL—BONDS OF FAIRVIEW VILLAGE SCHOOL DIS-
TRICT, CUYAHOGA COUNTY, OHIO, \$10,000.00.

COLUMBUS, OHIO, March 2, 1936.

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