

Note from the Attorney General's Office:

1923 Op. Att'y Gen. No. 23-0786 was modified
by 1980 Op. Att'y Gen. No. 80-052.

way superintendent, and (6) all purchases of materials, machinery and tools, shall, where the amount involved exceeds five hundred dollars, be made from the lowest responsible bidder, after advertisement made in the manner provided in said section.

In the maintenance and repair of county roads, or inter-county highways or main market roads within the limits of their township, they are subject to the conditions and limitations set out in said sections 3370, 3371-1 and 3373 of the General Code, which have been hereinbefore designated, and in addition thereto, in the case of county roads they must (1) have the approval of the county commissioners, and in the case of inter-county highways or main market roads they must (1) have the approval of the Director of Highways and Public Works.

It follows from the foregoing discussion, and I am of the opinion, in specifically answering your question, that township trustees are authorized to construct or repair culverts, subject to the conditions and limitations hereinbefore set out.

Respectfully,
C. C. CRABBE,
Attorney-General.

785.

APPROVAL, FINAL RESOLUTIONS, ROAD IMPROVEMENTS IN THE
FOLLOWING COUNTIES, GREENE, FRANKLIN AND SCIOTO.

COLUMBUS, OHIO, October 3, 1923.

Department of Public Highways and Public Works, Columbus, Ohio.

786.

CIVIL SERVICE COMMISSION—MAY NOT PAY PER DIEM ATTEN-
DANCE FEES TO STATE, COUNTY OR MUNICIPAL EMPLOYEES
SUBPOENAED UNDER AUTHORITY OF SECTION 486-7 G. C.

SYLLABUS:

The State Civil Service Commission may not pay a per diem attendance fee and mileage to state, county and municipal employes or elective officials who are summoned under authority of section 486-7 to testify before such Commission.

COLUMBUS, OHIO, October 4, 1923.

The State Civil Service Commission, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your recent communication as follows:

Can or cannot the State Civil Service Commission pay per diem attendance fees to state, county or municipal employees or elective officials who are subpoenaed under authority of section 486-7-5 to testify before it?

In the past the Commission has paid mileage fees to all witnesses subpoenaed, and attendance fees to all witnesses except those employed by the state or some political subdivision thereof. The question has been raised, however, if attendance fees should not also be paid to civil employes."

Section 486-7, General Code of Ohio, as far as pertinent, provides:

The commission shall,

* * * * *

Have the power to subpoena and require the attendance and testimony of witnesses and the production thereby of books, papers, public records and other documentary evidence pertinent to the investigations, inquiries, or hearings on appeal from the action or decision of an appointing officer as is herein authorized, and to examine them as it may require in relation to any matter which it has authority to investigate, inquire into or hear. Fees shall be allowed to witnesses, and on their certificates, duly audited, shall be paid by the state treasurer, or in the case of municipal commissions by the county treasurer, for attendance and traveling, as is provided in section 3012 of the General Code for witnesses in courts of record. All officers in the civil service of the state or any of the political subdivisions thereof and their deputies, clerks, subordinates and employees shall attend and testify when summoned so to do by the commission. * * * "

It will be noted that the first part of Paragraph 5 in the above section provides for the subpoenaing of witnesses, requiring of attendance and production of records and other evidence. The section then provides for the allowance of fees as provided in section 3012, General Code of Ohio. It further provides:

All officers in the civil service of the state or any of the political subdivisions thereof and their deputies, clerks, subordinates and employees shall attend and testify when summoned so to do by the commission."

It will be noted that this section provides that all officers in the civil service of the state shall attend and testify when summoned. As the statute had already provided for the subpoenaing of witnesses, it is evident that it was the intent of the legislature to make it within the scope of the official duty of all officers in the civil service to attend and testify when summoned. This provision would be unnecessary if all officers in the civil service are to be considered under the head of witnesses subpoenaed.

In an opinion of the Attorney-General, found in Reports of the Attorney-General for 1915, p. 2477, it was held:

When the services of assistant fire marshals are required as witnesses in the trial of criminal cases with which they have theretofore had an official connection, such services are within the scope of their official duties and while so in attendance as witnesses they should be paid their regular salary and expenses, but no further fees or mileage as witnesses should be demanded or paid to them or taxed as costs in said cases."

In an opinion rendered by this department, found in Opinions of the Attorney-General for 1916, p. 872, it was held:

Inspectors appointed by the state liquor licensing board are not entitled to witness fees and mileage in cases of criminal prosecution of offenses

against the liquor laws, where such inspectors are at the same time receiving their salaries and expenses for their time and services as such inspectors."

In a recent opinion of this department, rendered to the Director of Health, being Opinion No. 555, rendered July 5, 1923, it was held:

An employe of the state attending a trial in line of his duty cannot receive mileage and also be paid his traveling expenses from the state. In the event mileage is collected it should be applied to such expenses."

From the foregoing, it will be seen that if the attendance of a witness is in the line of his duty, such witness is not entitled to attendance fee. Section 486-7, General Code of Ohio, makes such attendance in line with the duty of officers under the civil service.

A question which suggests itself is whether a person under civil service is entitled to receive mileage for such attendance. It is believed that the same rule of construction would apply in regard to mileage as is applicable to the attendance fee.

As it is a part of the duty of a person under civil service to attend when summoned by the civil service commission, such person is entitled to his actual and necessary expenses to be paid from the traveling fund of the department to which he is attached.

It is therefore my opinion that the State Civil Service Commission may not pay a per diem attendance fee or mileage to state, county or municipal employes, or elective officials, who are summoned under authority of section 486-7 to testify for such Commission.

Respectfully,
C. C. CRABBE,
Attorney-General.

787.

PROSECUTING ATTORNEY—MAY EMPLOY SPECIAL OFFICER TO ENFORCE TRAFFIC LAWS IF NO SECRET SERVICE OFFICER HAS BEEN APPOINTED—MAY HAVE BOTH IF REASONABLY NECESSARY.

SYLLABUS:

1. *The provisions of Section 7251 of the General Code do not preclude a prosecuting attorney from legally employing a special officer to enforce the traffic laws.*
2. *If no secret service officer has been appointed by such prosecuting attorney under the provisions of Section 2915-1 of the General Code, the allowance made to a prosecuting attorney under the provisions of Section 3004 of the General Code may be expended in the employment of a person to enforce the traffic laws.*
3. *If such secret service officer has been appointed, such expenditure may not be made unless the services of such person are reasonably necessary in addition to the services of such secret officer.*

COLUMBUS, OHIO, October 4, 1923.

Bureau of Inspection and Supervision of Public Offices, Department of Auditor of State, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your recent communication, containing the following question: