

1623.

APPROVAL, BONDS OF THE CITY OF CUYAHOGA FALLS, SUMMIT COUNTY, OHIO—\$19,138.76.

COLUMBUS, OHIO, January 25, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

1624.

CORONER—FEES—WHERE SECTIONS 2856-4 AND 2856-5, GENERAL CODE, APPLY, CORONER NOT ENTITLED TO RECEIVE ANY OTHER FEES—NOT ENTITLED TO FEES WHEN DELEGATED PERSON PERFORMS DUTIES.

SYLLABUS:

1. *In any county in which said Sections 2856-4 and 2856-5, General Code, apply, the coroner of such county is not entitled to receive for his own use the autopsy fees provided for by Section 2856-3, General Code, for any autopsies made by him on and after August 1, 1927, and if any such fees are collected by the coroner of such county he is required to pay the same into the county treasury as provided in said Section 2856-5, General Code.*

2. *The coroner of a county is not entitled to the fee of three dollars which Section 2866, General Code, provides as the fee for viewing of a dead body where the view of such dead body was not made by the coroner, but was made by some physician delegated by the coroner to perform such duty; nor is the coroner in such case entitled to the mileage fee provided for by said section of the General Code for the traveling done by the physician in making such view.*

COLUMBUS, OHIO, January 25, 1928.

HON. EDWARD C. STANTON, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date, in which my opinion is asked on certain questions therein stated. Your communication is as follows:

“Section 2856-5, General Code, provides that the coroner of counties having a population of 400,000 or more ‘shall pay over to the county treasury of said county all fees, to which he shall be entitled under all sections of the General Code forthwith on receipt of the same.’

QUESTION 1: We are in doubt as to whether the language of Section 2856, G. C., together with that of Section 2856-3, G. C., so far make it the duty of the coroner to perform autopsies upon authorization by the prose-

cuting attorney, that any fees which are provided to be paid the coroner for autopsies must be turned into the county treasury.

During a period the early part of 1927 the coroner was ill. Acting under authority of the coroner, another physician viewed bodies of persons whose death warranted such view and conducted examination into the causes of death. Acting upon the information thus obtained, the coroner made reports as is provided for by the latter part of Section 2856.

QUESTION 2. Is the coroner entitled to the fee provided for such views by Section 2866?

QUESTION 3. Should mileage provided for by the same section be paid?"

Prior to the enactment of Sections 2856-4 and 2856-5 of the General Code, at the last session of the General Assembly, the compensation of the coroner in all of the counties of the state was on a fee basis. One of the fees provided for is that for making autopsies under authorization of the prosecuting attorney of the county. Section 2856-3, General Code, providing for such fees, reads as follows:

"In counties having a population according to the last federal census of 100,000 or more, no person shall be eligible to the office of coroner except a licensed physician of good standing in his profession. For his services in the performance of an autopsy under Section 2856 of the General Code the coroner shall receive a fee of \$20.00 and for decomposed or infected bodies \$40.00 to be paid from the county treasury in the same manner as other fees of the office."

On April 21, 1927, the legislature enacted said Sections 2856-4 and 2856-5, General Code, 112 O. L. 204, which sections became effective August 1, 1927. These sections provide as follows:

Sec. 2856-4. "In counties having a population, according to the last federal census, of four hundred thousand or more the coroner shall receive a salary of six thousand dollars per annum, payable monthly from the county treasury upon the warrant of the county auditor."

Sec. 2856-5: "In counties having a population, according to the last federal census, of four hundred thousand or more the coroner shall pay over to the county treasury of said county all fees, to which he shall be entitled under all sections of the General Code, forthwith upon receipt of same.

All coroners in such counties shall report to the county commissioners on the first Monday in September each year a certified statement of the amount of all fees collected during the same period, naming the party or parties to each case together with a statement of the amount of funds paid by him pursuant to law into the county treasury naming the source from which such funds were derived."

It will be noted that by the provisions of these sections of the General Code the compensation of the coroner in counties having a population of 400,000 or more at the last federal census is placed on a salary basis, and the coroner in such counties is required to "pay over to the county treasury of said county all fees to which he shall be entitled, under all sections of the General Code, forthwith on receipt of same." Inasmuch as the legislature has made no exception with respect to the fees required to be paid into the county treasury by the coroner in such counties, but has in unmistakable language expressed its intention that all fees of the coroner of such

counties shall be paid into the county treasury, I am quite clearly of the opinion that in any county in which said Sections 2856-4 and 2856-5, General Code, apply, the coroner of such county is not entitled to receive for his own use the autopsy fees provided for by Section 2856-3, General Code, for any autopsies made by him on and after August 1, 1927, and that if any such fees are collected by the coroner of such county he is required to pay the same into the county treasury as provided in said Section 2856-5, General Code.

I assume that the facts stated in your communication relating to your second and third questions have reference to a time in the early part of 1927 prior to the time that the act by which Sections 2856-4 and 2856-5, General Code, were enacted became effective. Section 2866, General Code, referred to in your communication, reads as follows:

“Coroners shall be allowed the following fees: For view of dead body, three dollars; for drawing all necessary writings, for every one hundred words, ten cents; for traveling each mile, ten cents; when performing the duties of sheriff, the same fees as are allowed to sheriffs for similar services.”

At the time indicated in your communication and prior to its repeal by said act above referred to (112 O. L. 204, 206) Section 1745, General Code, provided as follows:

“When the office of coroner becomes vacant by death, resignation, expiration of the term of office, or otherwise, or when the coroner is absent from the county, or unable from sickness or other cause to discharge the duties of his office, a justice of the peace of the county shall have the powers and duties of the coroner to hold inquests. When acting in the capacity of coroner, a justice may receive the fees allowed by law to coroners in such cases.”

With respect to the application of this section to the questions here presented, it will be noted that Section 2856-3, General Code, above quoted, provides that in counties having a population, according to the last federal census, of one hundred thousand or more, no person shall be eligible to the office of coroner except a licensed physician of good standing in his profession. This provision, in my opinion, is a qualification of the office of coroner in such counties, and not of a justice of the peace of the county who may be called upon to perform the duties of the coroner in case of the latter's disability. Inasmuch as under the provisions of Section 1745, General Code, any justice of the peace of Cuyahoga County called in for the purpose, was authorized to view the bodies of persons when the circumstances of their death warranted such view and an examination into the causes of death, and such justice of the peace was the only person authorized to conduct such inquests and collect the statutory fees therefor, it follows that there was no authority on the part of the coroner, or any other officer, to delegate such duties to the physician referred to in your communication. The physician performing such duties could not, of course, have any right to collect the fees provided for in such inquests either for viewing the dead bodies or for mileage in traveling for the purpose of making such views; and I do not understand that the physician referred to is making any claim for such fees or mileage. The question is, whether the coroner can collect such fees and mileage notwithstanding the fact that by reason of his illness he was unable to make such inquests.

Ordinarily the statutory compensation of an officer is considered to be an incident to his office, and not to the performance of the duties of the same; and unless the conduct of the officer amounts to an abandonment of the office, the fact that he does not perform all of his duties does not affect his right to such compensation, unless it is otherwise provided by statute. *People ex rel. vs. Bradford*, 267 Ill. 486; *City of Chicago vs. Luthardt*, 191 Ill. 516; *Bryan vs. Cattell*, 15 Ia. 538; *Larson vs. St. Paul*, 83 Minn. 473; *Bates vs. St. Louis*, 153 Mo. 18; *O'Leary vs. Board of Education*, 93 N. Y. 1; *Young vs. Morris*, 470 Okla. 743; *Bartholomew vs. Springdale*, 91 Wash. 408. See also *Cleveland vs. Lutner*, 92 O. S. 493; *Zangerle vs. State ex rel. Walther*, 115 O. S. 168.

In 22 Ruling Case Law, at pages 529 and 530, it is said:

"The right of an officer to his fees, emoluments or salary is not impaired by his occasional or protracted absence from his post, or even by his neglect of duty, or failure to perform substantial services * * * If there is no provision directing a deduction from the salary no such deduction will be made."

There is no difficulty in applying this principle of law where the compensation of the officer is a fixed salary, or where the same consists of fees accruing to his office on the performance of duties or services therein by deputies or assistants, in the absence of the officer. There is, however, an insuperable difficulty in applying this rule to fees which can only accrue on the performance of particular duties or services which can only be performed by the officer in person. Under the provisions of Section 2866, General Code, a fee of three dollars is allowed for viewing a dead body and in addition thereto, mileage at the rate of ten cents for each mile traveled in making such view. The right to these fees, however, does not accrue until the services are performed by some one legally authorized to do so.

As above noted, the only persons who could perform said services were either the coroner himself or, in case of his disability, some justice of the peace of Cuyahoga County. The services in question were performed by neither of these officials.

In the case of *Wheatley vs. City of Covington*, 74 Ky. (11 Bush), p. 18, it is said:

"Where specific compensation is given by law to a public officer by way of fees or commissions for the performance of specific duties, the true rule would seem to be, that he is not entitled to the compensation unless he performs the service; nor can he recover damages on account of having been prevented from performing the services whereby he would have earned the designated compensation."

See *Smith vs. Mayor of New York*, 37 N. Y. 518; *Ricksecker vs. Board of County Commissioners*, 83 Kan. 346.

By way of specific answer to your second and third questions, therefore, I am of the opinion that the coroner of Cuyahoga County is not entitled to recover the statutory fee and mileage on inquests held during his disability by said other physician referred to in your communication. This opinion is limited to the precise questions submitted by you and has no application to fees accruing to the office for transcribing the testimony of witnesses on such inquests, or to any fees other than those considered in this opinion.

Respectfully,

EDWARD C. TURNER.

Attorney General.