

1178.

APPELLATE JUDGES—ALLOWED EXPENSES FOR ATTENDING ANNUAL MEETING TO ELECT CHIEF JUSTICE.

SYLLABUS:

Judges of courts of appeals, meeting once a year under the provisions of Section 1518, General Code, for the purpose of electing a chief justice, are entitled to compensation for expenses so incurred.

COLUMBUS, OHIO, November 12, 1929.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date, which reads as follows:

“Under Section 1518, General Code, the judges of the courts of appeals are required to meet once each year to elect a presiding judge and to perform such other duties as are required by law at such convention.

Are the judges who attend such convention entitled to compensation for their expenses?”

Section 1518, General Code, to which you refer, reads:

“On the third Tuesday in September in each year, the judges of the court of appeals shall meet in the supreme court room in the city of Columbus, and organize by choosing one of their number chief justice and one of their number secretary for the next judicial year, which shall commence on the first day of January. Such judges shall then, but not later than October first, issue an order to the clerk of the court of appeals in each county of their respective districts, fixing the time of commencement of each term of the court of appeals in each county in each district for the next judicial year, and deliver a copy thereof to the secretary of state. Such order may thereafter be changed by the judges in any district when the business thereof requires it, and until such changes have been made, the terms in each county shall be held at the times fixed by the judges, annually, in general convention. The present chief justice chosen by the judges of the circuit court shall act as chief justice of the court of appeals until the chief justice of the court of appeals is chosen as herein provided.”

Section 1528, General Code, provides for the assignment by the chief justice of the court of appeals of an appellate judge to sit in another district than his own under certain circumstances.

Section 1529, General Code, provides that the actual expenses of a judge so assigned shall be paid from the state treasury upon the warrant of the auditor of state, issued upon certificate of the chief justice of the court of appeals.

Section 2251, General Code, provides that the annual salary of each judge of the court of appeals shall be \$8,000, payable from the state treasury.

Section 2253-2, General Code, effective August 10, 1927, provides for additional salary for each court of appeals judge to be paid by each county in his district.

Section 2253-3, General Code, effective August 10, 1927, provides that in addition to the annual salary and expenses provided in Sections 1529, 2251 and 2253-2, *supra*, each judge of the court of appeals holding court in a county in

which he does not reside shall receive his actual and necessary expenses while so holding court in the county in which he does not reside, payable out of the state treasury; also, that he shall receive a per diem of twenty dollars for each day's service in a district other than his own, this to be paid from the treasury of the county to which he is so assigned.

Thus it is seen that the salary of a judge of the court of appeals is derived from two sources, the state and the county, but that his expenses come from one source, the state.

It is stated in 23 American and English Encyclopaedia of Law, 2nd Edition, Vol. 23, page 389:

"Where the law requires an officer to do what necessitates an expenditure of money for which no provision is made he may pay therefor and have the amount allowed him."

Throop on Public Offices, Section 495, states:

"A public officer is entitled to receive from the public authority which he represents reimbursement for extraordinary expenses necessarily incurred by him, in the course of or in consequence of the discharge of his official duties, and not intended to be covered by the compensation allowed to him, the rule in this respect being the same as in cases of private agency."

It will be observed that Section 1518, *supra*, provides for organization, election of a chief justice and secretary, and that the body so constituted must "issue an order" fixing the time and place for holding court.

If the meeting provided in Section 1518, *supra*, may be construed as a session of court, then undoubtedly the payment of traveling expenses of the judges attending such session, and who do not reside in Franklin county, is provided for in section 2253-3, *supra*.

By specific provision of law, it is made mandatory that the judges meet annually at a place other than the place where their retaining official duties are transacted, and I believe this sufficient to justify the payment from the state treasury of the expenses incident thereto.

Specifically answering your question, therefore, I am of the opinion that judges of courts of appeals, meeting once a year at Columbus, under the provisions of Section 1518, General Code, for the purpose of electing a chief justice, are entitled to compensation for expenses so incurred.

Respectfully,
GILBERT BETTMAN,
Attorney General.

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APPROVAL, BONDS OF HAMILTON COUNTY—\$329,227.22.

COLUMBUS, OHIO, November 12, 1929.

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