

2187

CORONERS, COUNTY — NOT ENTITLED TO MILEAGE, EITHER BY STATUTE OR BY IMPLICATION WHEN THEY USE THEIR OWN AUTOMOBILES TO DISCHARGE THE DUTIES OF THEIR OFFICES — COMPENSATION LIMITED TO THAT OUTLINED IN SECTION 2855-3 G. C.

## SYLLABUS:

County coroners who use their own automobiles in discharging the duties of their office are not entitled to mileage for such use either by statute or by implication. Their compensation is limited to that provided for them in Section 2855-3 of the General Code.

Columbus, Ohio, August 21, 1950

Hon. Ralph J. Bartlett, Prosecuting Attorney  
Franklin County, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“As Prosecuting Attorney I appeared on the program of the Coroners’ State Convention at the Deshler-Wallick Hotel about two weeks ago. The question of allowing mileage to the coroner where he uses his own automobile in the course of business arose and I promised that since this was a matter of state-wide interest I would request an opinion from your office on that matter.

“I will accordingly appreciate it if you will render such an opinion to this office at your earliest convenience.”

Section 2855-3 of the General Code governs the question of coroners’ salaries and other compensation. It reads as follows:

“The annual salary of the coroner shall be four hundred dollars in counties of less than 25,000, as ascertained by the latest federal census of the United States. The coroner shall receive additional compensation as follows: one and one-half cents (1½c) per capita for the population of such county in excess of 25,000 and not in excess of 200,000; and one cent (1c) per capita for the population of such county in excess of 200,000. Such annual compensation shall not be more than six thousand dollars, payable monthly by the county treasurer of such county on the warrant of the county auditor.”

Prior to the effective date of the above section, county coroners were entitled, under the provisions of Section 2866 of the General Code, to a fee of ten cents per mile for each mile traveled in the course of their official duties. However, Section 2866, supra, and other then existent sections of the General Code pertaining to county coroners' compensation, were repealed and Section 2855-3, General Code, adopted in their stead by the 96th General Assembly in Amended Substitute Senate Bill No. 92, effective October 12, 1945.

The effect of the revisions resulting from the aforementioned bill upon mileage and other fees formerly allowed county coroners was considered and discussed by the then Attorney General in 1945. In an opinion rendered by him, Opinion No. 426, Opinions of the Attorney General for 1945, page 535, it was said:

“As a result of this revision county coroners will receive no mileage or other fees for official services, but instead will receive salaries and per capita compensation from the county treasurer based upon the population of their respective counties, pursuant to the provisions of new Section 2855-3, General Code.”

In view of this opinion, and the discussion preceding it, it is apparent that the legislature intended the provision for per capita compensation of Section 2855-3, supra, to be in lieu of mileage and other fees formerly allowed to coroners, and that county coroners are not now entitled, as a matter of right by statute, to mileage or any other compensation other than that provided for in Section 2855-3, General Code. As such, the only question left for consideration is whether or not it can be implied from the statutes and decided cases that county coroners are entitled to mileage for the use of their own automobiles in the course of their official duties.

Fundamental to a consideration of this question is the rule laid down by the court in *Debolt v. Trustees of Cincinnati Township*, 7 O. S. 237, at page 239, to the effect that:

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

*“Fees are not allowed upon an implication; \* \* \**

(Emphasis added.)

This rule has been considered, accepted and extended in subsequent cases so that now it is taken as well settled that county officers—of which

the coroner is one—are entitled to just such fees and compensation as are given them by statute and none other, and that any additional fees and compensation, over and above that provided for them by statute, are not allowed them upon the basis of any implication. *Jones v. Lucas County*, 57 O. S. 189; *Clark v. Lucas County*, 58 O. S. 107; *Richardson v. State*, 65 O. S. 108.

It is also equally well settled that public services required of or rendered by county officers within the scope of their official duties, or as an incident thereto, are considered as gratuitous or as compensated by their salaries or by the fees, privileges and emoluments accruing to them in matters pertaining to their offices. *Anderson v. Jefferson County*, 25 O. S. 13; *Jones v. Lucas County*, supra; *Clark v. Lucas County*, supra; *Richardson v. State*, supra.

Assuming for purposes of this opinion that traveling about the county to perform the functions of his office is one of the usual duties of a county coroner, it is apparent from the authority previously cited that it cannot be implied that a county coroner is entitled to any fee for miles covered in the course of his official business. In fact, it can be presumed that adequate compensation in lieu of mileage was provided for by the legislature when they made allowance for per capita compensation based on population figures in Section 2855-3, supra.

It is accordingly my opinion that a county coroner who uses his own automobile in discharging the duties of his office is not entitled to mileage for such use either by statute or by implication and that he is limited in the amount of compensation he can receive by the provisions of Section 2855-3, General Code.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.