

OPINION NO. 65-128**Syllabus:**

Three Hundred Dollars is the maximum amount of compensation allowable to be paid appointed counsel in the case of a felony under Section 2941.51 (B), Revised Code, regardless of the number of counts contained in the indictment giving rise to the case unless such added amount represents valid expenses incurred.

To: Robert O. Stout, Marion County Pros. Atty., Marion, Ohio
By: William B. Saxbe, Attorney General, July 13, 1965

I have before me your request for my opinion on the following question:

"Where one indictment contains several felony counts under Section 2941.51 (B), may the court grant compensation in excess of \$300.00 (none of which would be expenses)?"

Section 2941.50, Revised Code, provides:

"After a copy of an indictment has been served or opportunity had for receiving it, the accused shall be brought into court, and if he is without and unable to employ counsel, the court shall assign him counsel, not exceeding two, who shall have access to such accused at all reasonable hours.* * *"

It is to be noted that under Section 2941.50, supra, service of the indictment or opportunity to receive it or waiver of such indictment, whichever the case may be, operates as the event which requires the defendant to be brought into court and subsequently to have counsel appointed for him by the court if said defendant is without and unable to employ such counsel himself. Thus, the indictment has importance mainly as a reference in point of time in regard to the appointment of counsel.

An indictment may contain one count or several counts. A count is a statement of a distinct offense and one count standing alone can be brought under a separate indictment. However, Section 2941.04, Revised Code, provides:

"An indictment or information may charge two or more different offenses connected together in their commission, or different statements of the same offense, or two or more different offenses of the same class of crimes or offenses, under separate counts, and if two or more indictments or information are filed in such cases the court may order them to be consolidated.

"* * *The court in the interest of justice and for good cause shown, may order different offenses or counts set forth in the indictment or information tried separately or divided into two or more groups and each of said groups tried separately.* * *"

As provided by the above section, the prosecutor may set out different counts in the same indictment or he may separate such counts into different and distinct indictments subject to the court's order to either try the different counts contained in one indictment separately or to consolidate such separate indictments.

Furthermore, an indictment gives rise to but one case unless there are multiple defendants indicted jointly in which situation the court may require separate trials for each defendant. Section 2939.22, Revised Code, provides:

"Indictments found by a grand jury shall be presented by the foreman to the court of common pleas, and filed with the clerk of the court, who shall endorse thereon the date of such filing and enter each case upon the appearance docket and the trial docket of the term when the persons indicted have been arrested.* * *"

Section 2941.51, Revised Code, provides in part as follows:

"Counsel assigned in a case of felony under section 2941.50 of the Revised Code shall be paid for their services by the county, and shall receive therefore:

"(A) In a case of murder in the first or second degree, and manslaughter in the first and second degree, such compensation and expenses as the trial court may approve.

"(B) In other cases of felony, such compensation as the trial court may approve, not exceeding three hundred dollars and expenses as the trial court may approve.

" * * * * * * * * *"

It is to be noted that Section 2941.51, supra, refers to "counsel assigned in a case." A case is a suit instituted according to the regular course of judicial procedure. Rohde v. City of Newport, 55 S.W. 2d., 368 Ky. (1932). Furthermore, a case is stated when the pleadings and statement of facts contain all the material facts upon which the rights of the parties are to be determined. Rodgers v. Attorney General, 196 N.E. 2d., 855 Mass. (1964). An indictment is in effect a petition, being the state's assertion of its cause of action. State v. Cox, 87 Ohio St., 313 (1912).

I invite you to direct your attention to Opinion No. 997, Opinions of the Attorney General for 1964, which concerns Section 2941.51, Revised Code. The syllabus of that Opinion provides:

"The maximum of three hundred dollars and expenses for compensation of counsel assigned under Section 2941.51, Revised Code, in felony cases, other than murder cases, is the total compensation that may be allowed regardless of the number of lawyers assigned as counsel in a case."

Furthermore, I stated in the body of that Opinion:

"My conclusion is strengthened by the fact that the legislative history of this statute makes it clear that the entire trend of this legislation is to control and limit the compensation paid as fees for defending indigent prisoners. Opinion No. 3104, Opinions of the Attorney General for 1924. Having this in mind, it is logical to conclude that the legislature intended to place a maximum on the fee for each case, rather than on the fee of each attorney. The contrary conclusion would mean that costs could easily be pyramided by the assignment of additional lawyers."

Considering my former Opinion No. 997, supra, and Sections 2939.22 and 2941.51, supra, I am convinced the legislature intended that counsel appointed by the court be compensated for their services rendered in connection with the case as a whole and did not intend that counsel be compensated according to the number of counts in the indictment.

Therefore, it is my opinion and you are accordingly

advised as follows:

Three Hundred Dollars is the maximum amount of compensation allowable to be paid appointed counsel in the case of a felony under Section 2941.51 (B), Revised Code, regardless of the number of counts contained in the indictment giving rise to the case unless such added amount represents valid expenses incurred.