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EMPLOYEES, STATE—JURY SERVICE—NO DEDUCTION FOR SUCH JURY SERVICE FROM SALARY OF SUCH EMPLOYEES—ANY REIMBURSEMENT IS A MATTER FOR DIRECTOR OF EACH STATE DEPARTMENT, §121.07 R.C.

SYLLABUS:

1. The several state departments are not authorized to deduct from the compensation of a state employee that portion of his salary attributable to periods when such employee responds to a summons for jury duty, whether such jury duty is required by Federal or State law.

2. Any requirement of reimbursement to the fund from which the normal salary is paid to such employee so responding to summons for jury duty is a matter for determination by the director of each state department as provided by Section 121.07, Revised Code.

Columbus, Ohio, August 11, 1956

Hon. Leland S. Dougan, Chairman
The State Civil Service Commission of Ohio
State Office Building, Columbus, Ohio

Dear Sir:

I have your request for my opinion, reading as follows:

“If and when an employee of the State Highway Department who is under Civil Service is called for jury duty, does he lose his State Highway pay for the several days he serves on said jury?”

The answer to your query is not to be found in either state statute or in the decisions of the courts. I invite your initial attention to the following informal opinion issued by my immediate predecessor, Informal Opinion No. 144, Informal Opinions of the Attorney General for 1952, June 23, 1952:

“In your letter of recent date you request my opinion as to the legality of the practice of the Department of Liquor Control in paying one of its employees his regular salary during the time he served as a member of a Federal Grand Jury, such employe having turned over to the Department of Liquor Control the checks he received from the Federal Government as compensation for such service on the Grand Jury.

"I have been unable to find any statute in Ohio which would either authorize or prohibit such practice. It is my understanding, and your letter so states, that such practice has long been followed in state government. It would seem to be that the State of Ohio should be the last one to place impediments in the path of a person called for jury duty, be it state or federal jury duty, or be it petit jury or grand jury duty.

"The nearest thing I find by way of any opinions of this office to a consideration of the exact problem involved is contained in Opinion No. 3950, Opinions of the Attorney General for 1934, page 1900. The then Attorney General expressed the opinion that a state highway patrolman subpoenaed to appear before a grand jury or in a criminal prosecution before a Court of Common Pleas as a witness was entitled to his witness and mileage fees which, in the event he was paid his salary and traveling expenses while so testifying by the State Highway Department, should be turned back to that Department.

"In this 1934 opinion reference was made to several prior opinions of the Attorneys General relating generally to the right of public officers or employes who receive full pay, to also receive witness fees, mileage fees, etc. Each of such opinions, including the 1934 opinion, contain expressions of opinion of the then Attorneys General as to the *practical* method or *fair* method of handling such situations. Apparently it was upon the basis of such expressions of opinion that the precedent was established in Ohio government of paying a state employe his full salary, conditioned upon his turning over to the state his checks for witness fees, jury fees, etc.

"In the absence of any statutes on this subject matter, it would seem that long continued administrative practice is to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do. *Industrial Commission v. Brown*, 92 Ohio St., 309, 311.

"While I am in agreement with my predecessors who, in somewhat similar situations, suggested this solution as a fair and practical one, I do not believe it to be the function of this office to pass on the fairness or practicability of an administrative practice. However, based upon the apparent long continued administrative practice and the fact that there are no statutes or court decisions to my knowledge prohibiting the same, it is my opinion that the practice followed in this case is not illegal."

It is apparent that in the situation which you have presented the State of Ohio is the employer and at the same time, the commander of jury service. It is well recognized that jury service is an honorable obligation of each qualified citizen. The following comment is to be found in 31 *American Jurisprudence*, p. 62:

“Jury service is not a right or privilege which may be claimed, but is an obligation imposed by law upon those who come within a designated class possessing the required qualifications. The state has an inherent and indisputable right to the service of citizens as jurors. Jury service is one of the burdens of citizenship, and not merely one of the privileges; it is a duty of all citizens to undertake this burden when called upon so to do, unless they are exempted or entitled to be excused. Jury service is a duty that cannot be shirked on a plea of inconvenience or decreased earning power, except where the financial embarrassment is such as to impose a real burden and hardship.

“The obligation of serving as a juror may be enlarged, restricted, or removed by the legislature. It has been held that the legislature may impose the burden of jury service on some and relieve others of the obligation, provided the classification is not in derogation of the equal protection provisions of the state and federal constitutions. The fact that jurors of an original panel have drawn their pay for services rendered and been temporarily excused furnishes no reason why they may not be required to return and sit in any case properly before the court and not disposed of.”

As was stated by by immediate predecessor in Opinion No. 5982, Opinions of the Attorney General for 1955, p. 616, the second and third paragraphs of the syllabus reading :

“Where state employees are compensated by a monthly salary such salary is ‘based upon full-time service’ as provided in Division (E) of Section 143.10, Revised Code, and where an employee is absent from the state service without authority a deduction from his salary should be made with respect thereto.

“In making deductions from the salary of a state employee with respect to periods of unauthorized absence there is no requirement that the computation of the amount thereof be made by the department concerned by the application of the formula provided in Section 143.10, Revised Code, for the computation of compensation for service in excess of the standard work-week ; but the application of such formula in such cases could not be deemed unreasonable. Such deductions may be computed by the department concerned by any rule which reasonably relates the period of unauthorized absence to the monthly service required under the ‘standard work-week provision’ in Section 121.16, Revised Code.”

The requirement of jury service is to be summarized from the following statutory provision :

Section 2313.25, Revised Code :

“The clerk of the court of common pleas shall deliver to the sheriff venires containing the names and addresses of the jurors

drawn, and specifying when the jurors shall appear. The sheriff shall notify each juror named therein to attend the term or part of a term for which he was drawn, by serving upon him at least six days before the commencement thereof, a notice addressed to him, stating that he has been drawn as a juror for and is required to attend, the term or part of a term specified in the notice. Such notice may be served personally, by mail, or by leaving it at the juror's residence, or at his usual place of business. Before the commencement of a term, or part of a term, the sheriff shall return the venires for that term or part of a term, with his services thereon, and such return and service shall be presumptive evidence of the fact of such service."

Section 2313.29, Revised Code:

"No person, whose name is drawn and who is notified to attend a term or part of a term of a court of record as a juror, shall fail to attend at the time specified in the notice, or from day to day.

"A fine imposed for the violation of this section under division (B) of section 2313.99 of the Revised Code, may be wholly or partly remitted by direction of the judge in open court, before the end of the same term, and upon good cause shown; otherwise it shall not be remitted. Each remission so made by the judge, with the reason therefor, shall be entered on the journal of the court. This section applies to an additional grand juror or a special juror, as well as to the regular petit juror."

Section 2313.30, Revised Code:

"When a person whose name is drawn and who is notified, fails to attend and serve as a juror at a term of a court of record, without having been excused, the court, besides imposing a fine as prescribed in section 2313.29 of the Revised Code, may direct the sheriff to arrest him and bring him before the court; and when he has been so brought in, it may compel him to serve, or it may punish him as for contempt of court."

Since the state of Ohio is both the employer and the summoner, it cannot be said that absences from state employment for the purpose of answering the call for jury duty constitute *unauthorized* absence for which the implied authority was found in Opinion No. 5982, *supra*. As stated in Informal Opinion No. 144, *supra*, the administrative practice of the Department of Liquor Control in requiring state employees of that department serving as jurors to remit their compensation as jurors to the fund from which their salary is paid before allowing such employees to receive their full state compensation would appear to be based upon the statutory authority found in the final paragraph of Section 121.07, Revised Code, reading:

“The director of each department *may prescribe regulations for the government of his department, the conduct of its employees, the performance of its business, and the custody, use, and the preservation of the records, papers, books, documents, and property pertaining thereto.*” (Emphasis added)

The applicable provisions of Federal law with regard to the requirement of jury service I deem to be equally applicable here due to the supremacy clause found in Article VI of the United States Constitution :

“This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land ; and the judges in every State shall be bound thereby, anything in the Constituion or laws of any State to the contrary notwithstanding.”

Title 28, United States Code, Section 1867, provides for the summoning of jurors for the Federal jury :

“When the court orders a grand or petit jury to be drawn the clerk shall issue summons for the required number of jurors and deliver them to the marshal for service.

“Each person drawn for jury service may be served personally or by registered or certified mail addressed to such person at his usual residence or business address.

“Such service shall be made by the marshal who shall attach to his return the addressee’s receipt for the registered or certified summons, where service is made by mail.”

This obviously was within the contemplation of my immediate predecessor when he rendered Informal Opinion No. 144, *supra*.

Therefore, in the absence of express statutory authority to the contrary, the following conclusion may be drawn :

1. The several state departments are not authorized to deduct from the compensation of a state employee that portion of his salary attributable to periods when such employee responds to a summons for jury duty, whether such jury duty is required by Federal or State law.

2. Any requirement of reimbursement to the fund from which the normal salary is paid to such employee so responding to summons for jury duty is a matter for determination by the director of each state department as provided by Section 121.07, Revised Code.

Respectfully,
WILLIAM SAXBE
Attorney General