

You have further submitted the certificate of the Director of Finance to the effect that the sum of \$907.50 is available for that purpose.

Finding said lease in proper legal form, the same is hereby approved as to form and returned herewith.

Respectfully,  
C. C. CRABBE,  
*Attorney-General.*

2287.

APPROVAL, BONDS OF MADISON COUNTY, \$54,860.00.

COLUMBUS, OHIO, March 13, 1925.

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

2288.

WITNESS FEES—ENTITLED TO FEE FOR EACH DAY'S ATTENDANCE IN EACH CASE IF SUBPOENAED IN ONE CASE AND CALLED TO TESTIFY IN OTHER CASES, IS ENTITLED TO RECEIVE TWENTY-FIVE CENTS ADDITIONAL FOR EACH CASE.

**SYLLABUS:**

*Every witness is entitled to his fee for each day's attendance in each case in which he is subpoenaed. If he is subpoenaed in one case and is called upon to testify in other cases upon the same day, he would be entitled to receive twenty-five cents additional for each case in which he testifies.*

COLUMBUS, OHIO, March 13, 1925.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—I am in receipt of your communication as follows:

“In proceedings before the probate court in insanity cases, may witnesses subpoenaed and testifying in more than one case on the same day receive witness fees in each case or in only one case?”

“In this connection we call your attention to sections 1954, 1956, 1982, 3011 and 3014, of the General Code.

“We are enclosing herewith an opinion of the prosecuting attorney of Hamilton County, rendered to A. C. Bachmeyer, M. D., Superintendent of Cincinnati General Hospital in connection with this question.”

Section 1954, General Code, provides:

“When such affidavit is filed, the probate judge shall forthwith issue his warrant to a suitable person, commanding him to bring the person alleged to be insane before him, on a day therein named, not more than five days after the affidavit was filed, and shall immediately issue subpoenas for such witnesses

as he deems necessary, two of whom shall be reputable physicians, commanding the persons in such subpoenas named to appear before him on the return day of the warrant. If any person disputes the insanity of the party charged, the probate judge shall issue subpoenas for such person or persons as are demanded on behalf of the person alleged to be insane."

Section 1956, General Code, provides:

"Unless for good cause the investigation is adjourned, the judge at the time appointed, shall proceed to examine the witnesses in attendance. Upon the hearing of the testimony, if he is satisfied that the person charged is insane, he shall cause a certificate to be made out by two medical witnesses in attendance that the person is insane to the best of their knowledge and belief. The medical witnesses must have at least five years' experience in the practice of medicine, shall not be related, by blood or marriage, to the person alleged to be insane or to the person making the application for commitment, nor have any official connection with any state hospital. The medical certificate shall contain answers to such interrogatories as the Ohio board of administration, with the advice of the superintendents of the several hospitals, prescribes."

These sections provide for the subpoenaing and examining of witnesses in proceedings to test the sanity of persons against whom an affidavit has been filed.

Section 1982, General Code, 109 O. L., p. 42, provides:

"The fees and expenses enumerated in the preceding section, together with all costs in the probate court, shall be paid from the county treasury upon the certificates of the probate judge."

Section 11204, General Code, provides:

"The fees of witnesses, jurors, sheriffs, coroners, and constables, for all services rendered in the probate court, or by order of the probate judge, shall be the same as is provided by law, for like services in the court of common pleas."

Section 3011, General Code, is the section relating to fees in all cases or proceedings not specified in that chapter, and provides as follows:

"In all cases or proceedings not specified in this chapter, each person subpoenaed as a witness shall be allowed one dollar for each day's attendance and the mileage allowed in courts of record. When not subpoenaed each person called upon to testify in a case or proceeding shall receive twenty-five cents. Said fee shall be taxed in the bill of costs, and if incurred in a state or ordinance case or in a proceeding before a public officer, board or commission, the same shall unless otherwise provided by law, be paid out of the proper public treasury upon the certificate of the court, or officer, board or commission, conducting the proceeding."

It will be noted that section 3011 provides that "*in all cases \* \* \* each person subpoenaed as a witness shall be allowed one dollar for each day's attendance \* \* \*. When not subpoenaed each person called upon to testify \* \* \* shall receive twenty-five cents.*"

Section 3012, relating to civil cases, provides;

"Each witness in civil cases shall receive the following fees: For each day's attendance at a court of record, before a justice of the peace, mayor or person authorized to take depositions, to be paid on demand by the party at whose instance he is subpoenaed, and taxed in the bill of costs, one dollar, and five cents for each mile necessarily traveled from his place of residence to the place of giving such testimony and return, provided the distance be more than one mile; for attending coroner's inquest, the same fee and mileage provided above, to be paid from the county treasury on the certificate of the coroner."

It will be noted that this section provides the fee for a day's attendance at court. Section 3014, relating to criminal cases, provides:

"Each witness attending under recognizance or subpoena, issued by order of the prosecuting attorney or defendant, before the court of common pleas, or grand jury, or other court of record, in criminal causes, shall be allowed the same fees as in civil causes, to be taxed in only one cause, when attending in more causes than one on the same days, unless otherwise directed by special order of the court. When certified to the county auditor by the clerk of the court, such fees shall be paid from the county treasury, and, except as to the grand jury, taxed in the bill of costs. Each witness attending before a justice of the peace, police judge or magistrate, or mayor, under subpoena, in criminal cases, shall be allowed the fees provided for witnesses in the court of common pleas, and in state cases said fees shall be paid out of the county treasury, and in ordinance cases out of the municipal treasury, upon the certificate of the judge or magistrate, and the same taxed in the bill of costs.

"When the fees herein enumerated have been collected from the judgment debtor, they shall be paid to the public treasury from which said fees were advanced."

This section needs no construction, and since it specifically limits the fees in criminal cases and section 3012 provides the fee for a day's attendance at court, it is believed this shows an intent to place fees under section 3011 on a different basis.

In Opinions of the Attorney General for 1920, Volume 1, page 728, is found the following:

"Your second inquiry relates to witness fees in lunacy and other like cases. It is noted in this connection that section 1981, before its amendment in house bill 294, provided that the witness fees, in such cases, were the same as those provided for witnesses in the common pleas court and that in amended section 1981 no such provision was made.

"In view of the previous discussion of your first question, it is believed to be sufficient to say that prior to its amendment, section 1981 was a special statute constituting an exception to sections 3012 and 3014, and by force of the amendment omitting that part which fixes the fees in those cases, the same as in the common pleas court, with the amendment of section 3011 supra, such fees would necessarily come within the provisions of section 3011."

Additional weight is given to this belief by the fact that prior to the amendment in 109 O. L., the fee was charged against the patient, and it would have been almost impossible to determine in case of attendance on more than one case in the same day, how to divide the costs. As the words of this section relating to the charge of the fee

have not been changed by the amendment, they must be given the same meaning as in the original act.

In 40 Cyc. 2185, may be found the following:

"A witness, who in obedience to subpoenas, attends at the same time in several cases is entitled to fees and mileage for each \* \* \*."

The above rule as laid down in Cyc, of course, applies generally to all cases and must be modified to the extent of the statutes or holdings in each state.

However, in Opinions of the Attorney General for 1914, Vol. 1, p. 55, may be found the following:

"It seems to me that the situation of a constable, in respect to the fee for assistants, is no different from that of a witness, who is subpoenaed in more than one case in a day, especially when such several fees are not to be paid from the public treasury, but are taxed against and paid by a private individual."

In this opinion it was held that a justice of the peace in criminal cases may tax in favor of the constable a fee for each assistant constable in each case, notwithstanding the fact that such assistants participated in more than one arrest in a day.

In view of all the foregoing, it is my opinion that every witness is entitled to his fee for each day's attendance in each case in which he is subpoenaed. If he is subpoenaed in one case and is called upon to testify in other cases upon the same day, he would be entitled to receive twenty-five cents additional for each case in which he testifies.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*

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2289.

FISH AND GAME—LICENSE FEES THAT MAY BE CHARGED FOR A ROW-BOAT USED IN FISHING WITH A TROT LINE SECTION 1423 CON-  
STRUED.

SYLLABUS:

*The provisions of section 1423, General Code, permit charging a license fee for a row-boat used in fishing with a trot line when fishing in the Lake Erie Fishing District and when fishing in the bays, marshes, estuaries or inlets bordering upon, flowing into or in any manner connected with Lake Erie where fishing is permitted with a four-inch seine. Also a license fee of two dollars may be charged for each device used in fishing known as a "trot line."*

COLUMBUS, OHIO, March 13, 1925.

*Department of Agriculture, Division of Fish and Game, HON. D. O. THOMPSON, Chief, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your request for an opinion which reads as follows:

"Kindly advise your official opinion with reference to license fees to be charged under provisions of the following two paragraphs of section 1423 of the General Code: