

2951.

CLERKS OF COURT—FEES FOR TAKING APPLICATIONS FOR PASSPORTS UNDER UNITED STATES FEDERAL ORDER NO. 171—PAID INTO COUNTY TREASURY AS FEES OF SUCH OFFICE.

Under the provisions of sections 2977, 2988 and 2996 of the General Code, the one dollar fee authorized to be retained by clerks of state courts by U. S. federal order No. 171, may not be retained by clerks of Ohio state courts as remuneration for services in executing applications for passports, but should be paid into the proper county treasury as fees of such office under the provisions of section 2983 G. C.

COLUMBUS, OHIO, March 28, 1922.

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

GENTLEMEN:—Receipt is acknowledged of your recent communication which reads as follows:

“You are requested to furnish this department with your written opinion upon the following question:

Question: May a clerk of courts retain for his own use the fee authorized by the regulations of the federal department of state to be charged for taking applications for passports or must such fee be paid into the county treasury under the provisions of sections 2977 and 2983 of the General Code?

We are enclosing herewith a copy of circular, which at page 11 thereof, contains departmental order No. 171, authorizing the charge of a fee of one dollar by the clerk of a state court for executing applications for passports. Will you kindly return the circular with your opinion.”

Federal departmental order No. 171, quoted from page 11 of the pamphlet enclosed provides as follows:

“1. In accordance with that part of section 1 of the act of June 4, 1920, which reads as follows:

From and after the 1st of July, 1920, there shall be collected and paid into the treasury of the United States quarterly a fee of \$1 for executing each application for a passport and \$9 for each passport issued to a citizen or person owing allegiance to or entitled to the protection of the United States: *Provided*, That nothing herein contained shall be construed to limit the right of the Secretary of State by regulation to authorize the retention by state officials of the fee of \$1 for executing an application for a passport, * * *

clerks of state courts authorized to take passport applications are hereby authorized to retain a fee of \$1 for executing each application for a passport. They should not charge or retain more than that amount for executing an application for a passport.”

Analyzing the regulations provided in the order cited, it is apparent that clerks of state courts authorized to take passport applications are authorized under the regulation to retain a fee of one dollar for executing each application for a passport. The language also concludes that said clerks should not charge or retain more than that amount for executing an application for a passport, and it is thus noted that the force and effect of the word “retain” as used in the first paragraph of

the federal order is apparently broadened by the language used in the latter portion of the same, which states "They should not charge or retain more than that amount for executing an application for a passport." Hence in essence the federal order may be said to provide, that a clerk of a state court is authorized to *charge or retain* a fee of one dollar for executing an application for a passport.

Section 2977, however, of the General Code of Ohio provides:

"Section 2977. All the fees, costs, percentages, penalties, allowances and other perquisites collected or received by law as compensation for services by a county auditor, county treasurer, probate judge, sheriff, clerk of courts, surveyor or recorder, shall be so received and collected for the sole use of the treasury of the county in which they are elected and shall be held as public moneys belonging to such county and accounted for and paid over as such as hereinafter provided."

Section 2983 G. C. provides:

"2983. Fees paid into county treasury monthly. On the first business day of each month, and at the end of his term of office, each of such officers shall pay into the county treasury, to the credit of the general county fund, on the warrant of the county auditor, all fees, costs, penalties, percentages, allowances and perquisites of whatever kind collected by his office during the preceding month or part thereof for official services, provided that none of such officers shall collect any fees from the county; and he shall also at the end of each calendar year, make and file a sworn statement with the county commissioners of all fees, costs, penalties, percentages, allowances and perquisites of whatever kind which have been due in his office, and unpaid for more than one year prior to the date such statement is required to be made."

Section 2996 G. C. provides:

"2996. Salaries shall be instead of fees; maximum. Such salaries shall be instead of all fees, costs, penalties, percentages, allowances and all other perquisites of whatever kind which any of such officials may collect and receive, provided that in no case shall the annual salary paid to any such officer exceed six thousand dollars."

It is noted that the sections quoted supra provide generally for the payment of a salary to the designated county officials as a remuneration for the services they officially perform, and it is expressly and emphatically provided by sections 2977, and 2996 G. C. that the salary paid the clerk of courts is to be in lieu of all fees and perquisites of the office whatsoever, and that on the first business day of each month said clerk of courts and the other county officials mentioned in section 2977 G. C. are by the provisions of section 2983 G. C. required to pay into the county treasury all fees, costs, penalties, percentages, allowances and perquisites of whatever kind collected by the respective offices during the preceding month.

Previous to the enactment of the sections quoted, it was held that clerks of courts of common pleas might lawfully retain one-half of the fees received by them in naturalization cases under the federal act of June 29, 1906, although since the enactment of G. C. 2977 and 2996, he must account to the state for such fees. See *State vs. Horner*, 16 N. P. (N. S.), 449, 25, D. 144. It is thought that the authorities cited discuss fully and amply the same principle as that involved in the one under consideration, and it is believed that in such instances, the policy of the federal government is not to attempt to regulate the internal affairs of the state, or

to enact laws in variance with the public policy thereof, but rather that in such cases the federal order considered intends that in a state where a clerk is paid by fees, he may retain the fees he charges for the execution of applications for passports, and in a state where the clerk is paid a salary, he shall charge and receive the fees of a clerk and account for them to the proper public officer according to the law of the state placing him upon a salary basis.

Since therefore the county salary laws in Ohio, as provided by sections 2977, 2983 and 2996 G. C. specifically require that the salary of the clerk of courts shall be instead or in lieu of all fees, costs, penalties, percentages, allowances and all other perquisites of whatsoever kind such official may collect or receive, it is concluded that the fee of one dollar charged by a clerk of courts in Ohio for the execution of applications for passports, may not be retained by such clerk as personal remuneration for services performed officially, but should, together with the other collected fees of the office be paid into the county treasury in compliance with the provisions of section 2983 of the General Code.

Respectfully,

JOHN G. PRICE,
Attorney-General.

2952.

DEPARTMENT OF PUBLIC WELFARE—STATE HOSPITAL FOR INSANE
—JURISDICTION OVER PATIENT CONTINUES UNTIL LEGALLY
DISCHARGED—PROBATE COURT WITHOUT JURISDICTION
WHERE PATIENT EXCEEDED NINETY DAY VISITATION PER-
MITTED BY SECTION 1968 G. C.—HOW EXPENSE INCIDENT TO
RETURN OF ESCAPED PATIENT PAID—NO AUTHORITY OF LAW
TO DISCONTINUE NAME OF ESCAPED PATIENTS FROM ROLLS
OF INSTITUTION.

1. *The jurisdiction of a state hospital for the insane, over a patient lawfully committed, continues until the patient is legally discharged, and probate court proceedings of the nature of an original commitment are unnecessary and unwarranted in the instance of the return and admittance to the institution of a patient who has exceeded the period of the ninety day visitation permitted under section 1968 G. C.*

2. *The expense incident to the return of escaped patients of a state hospital for the insane, when not covered by the provisions of section 1978 G. C. may be paid from the funds of the institution appropriated or available for such a purpose.*

3. *There is no authority of law for the discontinuance of the names of escaped patients from the rolls of the institution, and the same should be continued thereon indefinitely.*

COLUMBUS, OHIO, March 28, 1922.

HON. H. S. MACAYEAL, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your recent communication which reads as follows:

“Section 1968 of the General Code referring to the absence of a patient from a state hospital provides as follows: