

OPINION NO. 69-109**Syllabus:**

1. Section 2335.01, Revised Code, authorizes, as necessary expenses, the imposition of mileage fees for appraisers regardless of whether the compensation paid to the appraisers is the ten dollars per parcel specified in that section or some higher amount fixed by the court pursuant to that section.

2. Such mileage fees should be paid directly to the appraisers in the same manner as the compensation provided for in Section 2335.01, Revised Code.

To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio
By: Paul W. Brown, Attorney General, August 28, 1969

I have your request for my formal opinion which reads as follows:

"Does the clerk of courts have legal authority to pay to the appraisers the sheriff's charge of ten cents per mile, when collected, for mileage travelled by his appraisers?"

This question comes up in connection with compensation of appraisers appointed by the Sheriff of Cuyahoga County for lands and tenements upon which he has levied execution

as provided in Section 2329.17, Revised Code. You state that the sheriff has been charging a fee of ten cents per mile for each of his appointed appraisers going to and coming from the lands appraised, under the authority of Section 311.17, Revised Code. These are taxed as part of the costs of the case, collected by the clerk of courts, who then pays them into the General Fund of the county. You state the sheriff now feels these mileage fees should be paid by the clerk directly to the appraisers.

Section 311.17, supra, provides in part as follows:

"For the services specified in this section, the sheriff shall charge the following fees, which the court or clerk thereof shall tax in the bill of costs against the judgment debtor or those legally liable therefor:

"(A) For the service and return of the following writs and orders:

"(1) Execution:

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"(b) When levy is made on real property, for the first tract, five dollars, and for each additional tract, one dollar;

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"(B) In addition to the fee for service and return the sheriff may charge:

"(1) On each summons, writ, order, or notice, a fee of ten cents per mile, going and returning, provided, that where more than one person is named in such writ, mileage shall be charged for the shortest distance necessary to be traveled;

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A close examination of Section 311.17, supra, indicates that the sheriff may charge the mileage fees only for his own mileage or that of his deputies in connection with service and return of the enumerated writs and orders. There appears nothing in this section indicating authorization for him to charge for mileage costs incurred by the appraisers he appoints in connection with executions levied on and sale of lands and tenements.

However, the fees and compensation of an appraiser of real property on execution are governed by Section 2335.01, Revised Code, which reads in part as follows:

"* * * Each person called by an officer to appraise real or personal property, on execution, replevin, or attachment, or to fix the value of exempt property shall receive not more than ten dollars per parcel and necessary expenses, provided, that in the appraisal of real estate the court may fix compensation at more than ten dollars per parcel."

This section provides compensation of not to exceed ten dollars per parcel and necessary expenses except that the court may fix compensation of more than ten dollars per parcel. You state in your letter that the Court of Common Pleas of Cuyahoga County has acted to fix the appraisal fees, but that no allowance is made for mileage traveled. The failure of the court, in fixing appraisal fees pursuant to the last clause of Section 2335.01, supra, to include allowance for mileage traveled is not, in my opinion, determinative of the question you have posed. There is nothing in Section 2335.01, supra, to indicate that, in the event the court does fix compensation higher than ten dollars, the appraiser is not also entitled to the "necessary expenses" provided for in that section.

Since, in the particular fact situation you have described in your request for my opinion, the mileage allowance is authorized not by Section 311.17, supra, but rather by Section 2335.01, supra, it follows that such allowance should be paid directly to the appraisers in the same manner as the compensation fixed by the court, rather than being paid by the clerk of courts into the general fund.

Therefore, it is my opinion, and you are so advised, that Section 2335.01, Revised Code, authorizes, as necessary expenses, the imposition of mileage fees for appraisers regardless of whether the compensation paid to the appraisers is the ten dollars per parcel specified therein or some higher amount fixed by the court pursuant to that section, and that such mileage fees should be paid directly to the appraisers in the same manner as the compensation provided for in that section.