

1445.

## FEES ALLOWED JUSTICE OF THE PEACE WHILE ACTING AS CORONER—PAID BY COUNTY.

COLUMBUS, OHIO, May 9, 1924.

*SYLLABUS:*

*A justice of the peace, when acting as coroner, may charge a fee of five dollars for viewing body, such charge to be paid by the county.*

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

Gentlemen:—

I am in receipt of your recent communication as follows:

“Section 1746-2 General Code, as amended 109 O. L., 304, fixes a fee for the justice of the peace for ‘viewing body in coroner cases, \$5.00.’ You will note that this section provides that a justice of the peace shall charge and collect the fees therein contained from the persons for whom services were rendered. Section 1745 G. C. provides that when there is a vacancy in the coroner’s office, or when he is absent from the county or unable through sickness or other reason to discharge the duties of his office, a justice of the peace of the county shall have the powers and duties of the coroner to hold inquests and when acting in the capacity of a coroner, the justice may receive the fees allowed by law to the coroner in such cases. Section 2866, G. C., as amended, 109 O. L., 544, provides that the coroner shall receive a fee of \$3.00 for the viewing of a dead body.

*Question 1.* When a justice of the peace acts in the capacity of coroner as provided in section 1745 G. C., may he charge a fee of \$5.00 under section 1746-2 G. C., or a fee of \$3.00 under section 2866, General Code?

*Question 2.* If it is held that he may legally charge the fee of \$5.00, from whom is the fee to be collected?”

Section 1746-2, General Code, found in 109 O. L., p. 304, as far as pertinent provides:

“For miscellaneous services, justices of the peace shall charge and collect from the persons for whom the services are rendered the following fees, and no more: \* \* \* \* \* viewing body in coroner cases, five dollars; \* \* \* \* \*”

Section 1745, General Code, provides:

“When the office of coroner becomes vacant by death, resignation, expiration of the term of office, or otherwise, or when the coroner is absent from the county, or unable from sickness or other cause to discharge the duties of his office, a justice of the peace of the county shall have the powers and duties of the coroner to hold inquests. When acting in the capacity of coroner, a justice may receive the fees allowed by law to coroners in such cases.”

The above sections are a part of Title 4, Chapter 11, and relate to “Justices of

the Peace". Section 2366, General Code, which is a part of Title 10, Division 2, Chapter 7, and which relates to "Sheriff and Coroner", provides:

"Coroners shall be allowed the following fees: For view of dead body, three dollars; for drawing all necessary writings, for every one hundred words, ten cents; for traveling each mile, ten cents; when performing the duties of sheriff, the same fees as are allowed to sheriffs for similar services."

Prior to the enactment of section 1746-2, General Code, the fees of a justice of the peace for services in criminal proceedings were set out in section 1746, fees for civil cases in 1746-1, fees for miscellaneous services in 1746-2, and fees when acting as coroner in section 1745, and were the same as those allowed to the coroner.

Section 1746-2, supra, included "viewing body in coroner cases" among the "fees for miscellaneous services", without changing section 1745 and allowed for such services five dollars. This shows a clear intent by the legislature to remove that part of the fees of justice of the peace from the chapter relating to coroners and to place the same in the chapter relating to justices of the peace and is an implied amendment to section 1745, General Code.

You are therefore advised that a justice of the peace, when acting as coroner, may charge a fee of five dollars for "viewing body".

Your second question is, "From whom is such fee to be collected?" Section 1746-2, as far as pertinent, provides:

"For miscellaneous services, justices of the peace shall charge and collect from the persons for whom the services are rendered the following fees, and no more: \* \* \* \* \*"

To answer your question, it is necessary to determine who are "the persons for whom the services are rendered". A survey of the sections relating to the coroner reveals that the duties enjoined upon the coroner are primarily for the purpose of aiding in the detection of crimes and in the punishment of those who perpetrate them.

In the case of *State ex rel vs. Bellows*, 62 O. S., 307, the court says on page 310:

"It is the duty of the coroner to hold an inquest and to perform the *other duties* enjoined upon him by these sections of the statute whenever a dead body is found within his county and he knows or may reasonably believe that death was caused by unlawful means. For such services he is entitled to the compensation which the defendants propose to pay."

If the purpose of the duties imposed is for the detection of crime, then the person for whom the services are rendered must necessarily be the county.

You are therefore advised that the fees allowed a justice of the peace, when acting as coroner, are to be paid by the county in which such services are rendered.

Respectfully,

C. C. CRABBE,

*Attorney General.*