

613.

COMMON PLEAS COURT MAY ORDER BAILIFF TO CONDUCT JURY TO VIEW PLACE WHERE MATERIAL FACT OCCURRED—EXPENSES PAYABLE OUT OF COUNTY TREASURY—SECTION 13658 G. C. CONSTRUED.

COLUMBUS, OHIO, July 27, 1923.

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

SYLLABUS:

Under the provisions of sections 13658, 2854 and 11448 G. C. the Common Pleas Court, whenever it deems proper for the jurors to have a view of the place at which a material fact occurred, may order them to be conducted in a body, under the charge of the sheriff, or for that purpose upon good cause, he may appoint his bailiff, to conduct them to such place, which shall be shown to them by a person appointed by the Court.

The Court may also authorize the payment of the necessary expenses thereof out of the county treasury in those cases not otherwise specifically provided for.

GENTLEMEN:—This will acknowledge receipt of your letter requesting an opinion of this department as follows:

“May a common pleas judge legally issue an order to his bailiff, who is not a deputy sheriff, to conduct a jury to view premises and authorize the payment of expenses thereof out of the county treasury?”

It will be observed that section 13658 of the General Code provides as follows:—

“Whenever the court deems it proper for the jurors to have a view of the place at which a material fact occurred, it may order them to be conducted in a body, under the charge of the sheriff, to such place which shall be shown to them by a person appointed by the court. While the jurors are absent no person other than the sheriff and person so appointed shall speak to them on any subject connected with the trial.”

While the above section provides that the jury may be conducted in a body “under the charge of the sheriff”, yet, we are inclined to the opinion that this section should be read in connection with section 2854 G. C., which provides that the court or judge may for good cause appoint a person to serve a particular process or order as follows:

“The court or judge may, for good cause, appoint a person to serve a particular process or order, *who shall have the same power to execute it which the sheriff has*; the person may be appointed on the motion of the party who obtains the process or order, and the return must be verified by affidavit; and he shall be entitled to the fees allowed to the sheriff for similar services.”

It will also be noted that section 11448 G. C., is as follows:

"If of opinion that it is proper for the jurors to have a view of property, the subject of litigation, or of a place where a material fact occurred, the court may order them to be conducted in a body *under the charge of an officer*, to such property or place, which shall be shown to them by a person appointed by the court for that purpose. While the jurors are thus absent, no person, other than the persons so appointed, shall speak to them on any subject connected with the trial."

Answering your inquiry it is my opinion that the Common Pleas Court, for good cause, may legally issue an order to his bailiff, who is not a deputy sheriff, to conduct a jury to a view of the place where a material fact occurred.

While we do not find any provision for the payment of the expenses in the above mentioned sections, yet we are inclined to the view that the actual expenses of conducting a jury to "such place" and return is a part of the incidental expense connected with the legal machinery in the administration of justice and the expenses thereof should therefore follow the general provision for expenses of jury, payable out of the county treasury in all those cases not otherwise specifically provided for.

Respectfully,
C. C. CRABBE,
Attorney General.

614.

NO AUTHORITY FOR PROCURING BURGLARY INSURANCE FOR OFFICE OF CLERK OF COURTS—SECTIONS 2872 AND 2874 G. C. CONSTRUED.

COLUMBUS, OHIO, July 27, 1923.

HON. OTHO L. MCKINNEY, *Prosecuting Attorney, Springfield, Ohio.*

SYLLABUS:

An examination of sections 2872 G. C., 2874 G. C. and others, pertaining to the office of Clerk of Courts, fails to disclose any statutory authority for the procuring of burglary insurance for said office, and the County Auditor therefore may not legally pay the premiums for same.

DEAR SIR:—This will acknowledge receipt of your letter requesting an opinion of this department as follows:

"The question has been presented to me whether the county auditor may legally pay the premiums on policies for burglary insurance in the clerk of the court's office. The money collected in the clerk's office after banking hours must remain in the safe over night until opening hours