

**OPINION NO. 88-025****Syllabus:**

Where the official shorthand reporter has been appointed pursuant to R.C. 2301.18 for a term of at least one year, he is not entitled to receive per diem compensation for the taking of shorthand notes of testimony before the grand jury; should he be required to prepare a transcript of such notes upon the order of the prosecuting attorney as provided for in R.C. 2301.25, however, he is entitled to receive compensation in the manner specified in R.C. 2301.24 and .25, in addition to the compensation he receives under R.C. 2301.22.

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**To: William R. Swigart, Fulton County Prosecuting Attorney, Wauseon, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, March 30, 1988**

I have before me your opinion request in which you ask:

Is the official fulltime shorthand reporter appointed by the Court of Common Pleas entitled to additional compensation on a per diem basis for taking shorthand notes of testimony before the county grand jury? If so, what is the procedure and source of payment?

The appointment of the official shorthand reporter is provided for in R.C. 2301.18, which states in pertinent part: "The court of common pleas shall appoint a stenographic reporter as official shorthand reporter of such court, who shall hold the appointment for a term not exceeding three years from the date thereof, unless

removed by the court...." Concerning the duties of the official shorthand reporter, R.C. 2301.20 states:

Upon the trial of a civil or criminal action in the court of common pleas, if either party to the action or his attorney requests the services of a shorthand reporter, the trial judge shall grant the request, or may order a full report of the testimony or other proceedings. In either case, the shorthand reporter shall take accurate shorthand notes of the oral testimony or other oral proceedings. The notes shall be filed in the office of the official shorthand reporter and carefully preserved....

The appointing court's authority with respect to the compensation of the official shorthand reporter is set forth in R.C. 2301.22 which states in part:

Each shorthand reporter shall receive such compensation as the court of common pleas making the appointment fixes. Such compensation shall be in place of all per diem compensation in such courts. In case such appointment is for a term of less than one year, such court may allow a per diem compensation to be fixed by the court, plus actual and necessary expenses incurred, for each day such shorthand reporter is actually engaged in taking testimony or performing other duties under the orders of such court, which allowance shall be in full for all services so rendered.

R.C. 2301.22 thus authorizes the appointing court to fix the shorthand reporter's compensation, which amount is to be "in place of all per diem compensation in such courts." Where the shorthand reporter is appointed for a term of less than one year, however, the appointing court may fix his compensation on a per diem basis, "plus actual and necessary expenses incurred, for each day such shorthand reporter is actually engaged in taking testimony or performing other duties under the orders of such court." Such allowance "shall be in full for all services so rendered." R.C. 2301.22.

In addition to those duties described above, the official shorthand reporter has certain duties with regard to providing transcripts. R.C. 2301.23 states in part:

When shorthand notes have been taken in a case as provided in [R.C. 2301.20], if the court, or either party to the suit or his attorney, requests transcripts of any portion of such notes in longhand, the shorthand reporter reporting the case shall make full and accurate transcripts of the notes for the use of such court or party. The court may direct the official shorthand reporter to furnish to the court and parties copies of decisions rendered and charges delivered by the court in pending cases.

Thus, R.C. 2301.23 imposes a duty upon the official shorthand reporter to prepare transcripts of the notes taken pursuant to R.C. 2301.20. R.C. 2301.24 establishes the scheme for compensating the official shorthand reporter for preparing such transcripts as follows:

The compensation of shorthand reporters for making transcripts and copies as provided in [R.C. 2301.23] shall be fixed by the judges of the court of common pleas of the county wherein the trial is had. Such compensation shall be paid forthwith by the party for whose benefit a transcript is made. The compensation for transcripts of testimony requested by the prosecuting attorney during trial in criminal cases or by the trial judge, in either civil or criminal cases, and copies of decisions and charges furnished by direction of the court shall be paid from the county treasury, and taxed and collected as costs.

By statute, therefore, separate provision is made for the shorthand reporter's preparation of, and compensation for, transcripts of his shorthand notes. The statutory scheme governing the duties of the official shorthand reporter and the

compensation to which he is entitled was explained generally in 1920 Op. Att'y Gen. No. 1036, vol. I, p. 235 at 236 as follows:

It will be observed that section 1550 specifies that the compensation provided therein shall be in place of all per diem compensation to be paid a stenographer except when an appointment is made for a term of less than one year. While primarily the duty of a court stenographer is to take shorthand notes of oral testimony, or other oral proceedings in the trial of a case, it is believed said section contemplates the performance of other duties under the orders of the court. Aside from the salary provision in section 1550, supra, there is no authority for a court stenographer to receive any compensation except when a transcript is made under the provisions of sections 1551 and 1552, supra, and section 1554 G.C.<sup>1</sup> (Footnote added.)

Specifically concerning the compensation of official shorthand reporters, 1965 Op. Att'y Gen. No. 65-191 states at 2-424: "It is well settled that the compensation provided for in [R.C. 2301.24] is in addition to the compensation allowed such reporters under [R.C. 2301.22]." 1980 Op. Att'y Gen. No. 80-099; 1954 Op. Att'y Gen. No. 3645, p. 143 (syllabus, paragraph one). See 1921 Op. Att'y Gen. No. 2017, vol. I, p. 329, 332 ("when services are rendered to the court by a court stenographer, the only compensation which may be paid from the public treasury for such services is the salary provided in section 1550 G.C. [(predecessor of R.C. 2301.22)], except in those cases in which transcripts have been properly made for use in the particular case in which the record was taken").

Specifically concerning the proceedings of the grand jury, R.C. 2939.11 authorizes the official shorthand reporter, among others, to take shorthand notes of testimony, as follows:

The official shorthand reporter of the county, or any shorthand reporter designated by the court of common pleas, at the request of the prosecuting attorney, or any such reporter designated by the attorney general in investigations conducted by him, may take shorthand notes of testimony before the grand jury, and furnish a transcript to the prosecuting attorney or the attorney general, and to no other person.

See generally 1930 Op. Att'y Gen. No. 2171, vol. II, p. 1244, 1247 (interpreting G.C. 13436-8 (predecessor of R.C. 2939.11) as meaning: "only an official shorthand reporter or a shorthand reporter designated by the court at the request of the prosecuting attorney, or any such reporter designated by the attorney general in investigations conducted by him, may take shorthand notes before a grand jury").

The compensation of shorthand reporters for such grand jury services is provided for in R.C. 2301.25, which states in part: "When the testimony of witnesses is taken before the grand jury by shorthand reporters, *they shall receive for such transcripts as are ordered by the prosecuting attorney the same compensation per folio and be paid therefor in the same manner provided in this section and [R.C. 2301.24].*" (Emphasis added.) See generally Op. No. 65-191 (explaining that the manner of payment set forth in R.C. 2301.22 is to be used in making payments under R.C. 2301.24, and, thus, is the manner in which the shorthand reporter is compensated where transcripts are provided in accordance with R.C. 2301.25); 1954 Op. No. 3645 (syllabus, paragraph two) ("[t]he compensation of a shorthand reporter for the preparation of transcripts of testimony of witnesses before the grand jury, when ordered by the prosecuting attorney may be paid upon certificate of the Clerk of courts as provided in [R.C. 2301.24]; and such payment should be charged against the county general fund"); 1917 Op. Att'y Gen. No. 265, vol. I, p. 675 (syllabus)

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<sup>1</sup> G.C. 1550 (now at R.C. 2301.22); G.C. 1551 (now at R.C. 2301.23); G.C. 1552 (now at R.C. 2301.24); G.C. 1554 (now at R.C. 2301.26).

("[t]he official stenographer is entitled, under [G.C. 1553 (now R.C. 2301.25)], to compensation for transcript of testimony of witnesses taken before the grand jury, to be paid from the county treasury").

Your specific question asks whether the official fulltime shorthand reporter is entitled to compensation in addition to that provided under R.C. 2301.22 for merely taking notes of testimony before the grand jury. In answering your question, I will assume that your reference to the "fulltime" status of the shorthand reporter indicates that such reporter has been appointed for a term of at least one year and is not, therefore, entitled to receive compensation on a per diem basis as provided in R.C. 2301.22. Further, I will assume that, in the situation about which you ask, the shorthand reporter's only services with respect to the grand jury are the taking of shorthand notes of testimony and exclude his transcription of such notes.

The question you ask was addressed in 1910-1911 Op. Att'y Gen. p. 857 (unnumbered) (issued April 15, 1910). The opinion considers the following question: "whether fees of an official stenographer in taking testimony in the grand jury room may be taxed as costs in the case when no transcript of the evidence is ordered by the prosecuting attorney." 1910-1911 Op. at 857. The opinion examines the statutory scheme governing the duties and compensation of the official stenographer, which was in pertinent part the same as the current scheme described above. The opinion concludes at 858:

[G.C. 1551 (predecessor of R.C. 2301.23)]...creates the duty of furnishing transcripts upon demand in ordinary cases, while [G.C. 1552 (predecessor of R.C. 2301.24)] provides for the compensation of the stenographer for furnishing transcripts in ordinary cases. So [G.C. 1553 (predecessor of R.C. 2301.25)]...provides the fee receivable and taxable in case a transcript is made upon order of the prosecuting attorney. There is no provision, however, authorizing the taxing of any costs or the receipt of any additional compensation for the services of the official stenographer in *taking notes* of the testimony before grand juries.

In the situation you present, the only duties performed by the official shorthand reporter with respect to the grand jury proceedings are the taking of shorthand notes. Since the shorthand reporter has been appointed for a term of at least one year, he is not paid on a per diem basis under R.C. 2301.22. Rather, the compensation which he receives under R.C. 2301.22 is "in place of *all* per diem compensation in such courts." (Emphasis added.) As set forth above, concerning the official shorthand reporter's services with respect to the grand jury, R.C. 2301.25 authorizes the shorthand reporter to receive compensation in addition to that prescribed under R.C. 2301.22 only in the event that such reporter is required to provide the prosecuting attorney with a transcript of the reporter's shorthand notes.

Based upon the foregoing, it is my opinion, and you are hereby advised that, where the official shorthand reporter has been appointed pursuant to R.C. 2301.18 for a term of at least one year, he is not entitled to receive per diem compensation for the taking of shorthand notes of testimony before the grand jury; should he be required to prepare a transcript of such notes upon the order of the prosecuting attorney as provided for in R.C. 2301.25, however, he is entitled to receive compensation in the manner specified in R.C. 2301.24 and .25, in addition to the compensation he receives under R.C. 2301.22.