

spect mentioned in your inquiry. These two latter sections do not attempt to create or attach any new responsibilities, but refer to existing legislation on that subject. There is no express reference to or connection with section 1815-9 in these later sections, and it is believed that the terms above quoted refer to the general legal responsibility rather than the special responsibility of certain persons for the support of others while inmates of the institutions referred to in section 1815-9.

Section 12429 deals with the responsibility of the adult child for an indigent parent, with the exception noted in section 12431. Section 13008 relates to the parental obligation of the care and support of children. Sections 7995 and 7997 define the mutual obligations of husband and wife as to support and their several obligations to their minor children. Without attempting at this time to closely define the extent of the liability under varying circumstances, it is believed that these sections and not 1815-9 indicate what persons are legally responsible.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

1392.

PROBATE COURT—PHYSICIANS ENTITLED TO FEE OF \$5 00 WHEN PERSON PROCEEDED AGAINST ADJUDGED TO BE INSANE—SEE SECTIONS 1956 AND 1981 G. C (108 O. L. 1203)—ENTITLED TO WITNESS FEES OF \$1 00 FOR DAY'S ATTENDANCE AND MILEAGE WHEN PERSON NOT ADJUDGED INSANE—SEE SECTION 3011 G. C (108 O. L. 1203) THE WORDS "IN FULL FOR ALL SERVICES RENDERED" IN SECTION 1981 G. C. CONSTRUED—PHYSICIANS NOT ENTITLED TO \$1.00 PER DAY WITNESS FEE IN ADDITION TO \$5.00 FEE.

1. *Under sections 1956 and 1981, as amended in House Bill 294, the two physicians designated by the probate court to make the examination and certificate required, are entitled to a fee of \$5.00 when the person proceeded against is adjudged to be insane and are not entitled to such fee when such person is not adjudged to be insane.*

2. *Physicians called as witnesses in such case when the person is not adjudged insane, are entitled to witness fees of \$1.00 for each day's attendance and the mileage provided for in section 3011 G. C.*

3. *The words "in full for all services rendered" refer to and include all of the services rendered by such physician in such case and the physician is not entitled to the \$1.00 per day witness fee in addition to the \$5.00 fee provided in section 1981.*

COLUMBUS, OHIO, July 2, 1920

HON JOHN W. DAVIS, *Probate Judge, Youngstown, Ohio.*

DEAR SIR:—Your request for the opinion of this department, which has been previously acknowledged, may be stated as follows:

1 Under section 1981, as amended in H. B. 294, is the physician entitled to a fee of \$5.00, whether the person who is charged with lunacy is adjudged insane or not?

2. If he is not entitled to the fee of \$5.00 when the patient is not adjudged insane and no certificate is made out, is he entitled to a witness fee of \$1.00 per day?

3. Do the words "in full for all services rendered" refer only to making the certificate and is the physician entitled to the \$1.00 per day as a witness fee?

Because of the close relation of these three questions, it is believed they will be affected by the same general consideration which may properly precede their individual discussion.

Sections 1954, 1956, 1981 and 1602 are pertinent.

Section 1954, outlining the procedure when an affidavit in lunacy is filed, in part provides that the probate judge "shall immediately issue subpoenas for such witnesses as he deems necessary, two of whom shall be reputable physicians, commanding the persons in such subpoenas named to appear before him on the return day of the warrant."

Section 1956 provides that the judge shall proceed to examine the witnesses in attendance. Up to this point it may be noted that in so far as duties or method of examination and procedure are concerned, no distinction is drawn between medical witnesses and other witnesses. The second sentence of section 1956, however, provides that

"upon hearing of the testimony, if he is satisfied that the person so charged is insane, he shall cause a certificate to be made out by two medical witnesses in attendance that the person is insane to the best of their knowledge and belief "

The rest of the section relates to the qualifications of the medical witnesses and the form of the certificate. This section was amended in 103 O. L., 447, whereby the Ohio Board of Administration was substituted for the Board of State Charities, but in other respects the statute was unchanged.

Section 1981, before the amendment in House Bill 294(108 O L, part 2, page 1203), among other provisions fixing fees and costs in lunacy cases, provided that there should be paid

"to each of the two physicians designated by the court to make examination and certificate, \$5.00, and witness fees as allowed in the court of common pleas;"

Section 1981, as thus amended, provided for such payment

"to each of the two physicians designated by the court to make examination and certificate, \$5.00 in full for all services rendered;"

Section 1602, as amended in H. B. 294, relates to the fees of the probate judge and not to the medical witnesses.

It must be noted here that the examination and certificate referred to in section 1956 and in 1981 are made only when the probate court "is satisfied that the person so charged is insane." When the person is adjudged to be not insane, obviously the certificate that "the person is insane to the best of their knowledge and belief" required by section 1956, would not be made.

Up to the point where the probate judge from the examination of the witnesses is satisfied that the person so charged is insane, no service is required of the physician other than those of a witness. The witness fees in such cases are fixed by section 3011 G. C.

If, however, the examination and certificate referred to are required, such physicians are designated and directed to make the same. As to this situation, that part of amended section 1981, above quoted, is responsive, providing that such physicians shall receive \$5.00 "in full for all services rendered."

This consideration of these sections is believed to furnish the answer to your questions, which the Attorney-General holds to be:

1. Under sections 1956 and 1981, as amended in House Bill 294, the two physi-

cians designated by the probate court to make the examination and certificate required, are entitled to a fee of \$5.00 when the person proceeded against is adjudged to be insane and are not entitled to such fee when such person is not adjudged to be insane.

2. Physicians called as witnesses in such case, when the person is not adjudged insane, are entitled to witness fees of \$1.00 for each day's attendance and the mileage provided for in section 3011 G. C.

3. The words "in full for all services rendered" refer to and include all of the services rendered by such physician in such a case and the physician is not entitled to the \$1.00 per day witness fee in addition to the \$5.00 fee provided in section 1981.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

1393

MUNICIPAL CORPORATIONS—MAYOR OR CHIEF OF POLICE OF A CITY  
MAY NOT LEGALLY RETAIN FEES IN STATE CASES UNDER PRO-  
VISIONS OF SECTION 4270 G. C. (108 O. L. 120<sup>2</sup>)—SAID FEES TO BE  
PAID INTO MUNICIPAL TREASURY—EXCEPTION.

*Under the provisions of section 4270 as amended in H. B. 294 the mayor or chief of police of a city may not legally retain for his own use fees assessed in state cases. Such fees should be paid into the municipal treasury except in cases where fees are advanced by the county treasury, in which case they should be remitted to the county treasury.*

COLUMBUS, OHIO, July 2, 1920.

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

GENTLEMEN—In your communication of recent date you present the following question in reference to the provisions of section 4270 of the General Code as amended in House Bill 294:

"May the mayor and chief of police of a city retain for their own use mayor's fees and chief or police fees legally assessed in state cases, or shall such fees be deposited in the municipal treasury or would such fees be payable into the county treasury?"

Said section provides:

"All fines and forfeitures in ordinance cases and all fees collected by the mayor, or which in any manner comes into his hands, due such mayor, or to a marshal, chief of police or other officer of the municipality and any other fees and expenses which have been advanced out of the municipal treasury, and all moneys received by such mayor for the use of the municipality, shall be by him paid into the treasury of the municipality on the first Monday of each month, provided that the council of a village may, by ordinance, authorize the mayor and marshal to retain their legal fees in addition to their salaries, but in such event a marshal shall not be entitled to his expenses. At the first regular meeting of council in each and every month, he shall submit a full statement of all moneys received, from whom and for what purposes received, and when paid into the treasury. Except as otherwise provided by law, all fines and forfeitures collected by him in state cases together with all fees and ex-