

would, no doubt, serve the purpose as well. The word "nee" is a French word, derived from the Latin "nata" past participle of "nasci", to be born. It is defined by Webster, as follows:

"Born:—Used in introducing the maiden family name of a married woman; as Madam de Stael, nee' Necker."

For instance, if a woman by the name of Mary Smith were commissioned as a notary public, and later, during the term of her commission as such notary public under the name of Mary Smith, she should acquire by marriage the legal surname of Jones, the proper way for her to sign certifications as a notary public thereafter would be Mary Jones (nee Smith). It perhaps might be done otherwise, by the use of the title "Mrs." before the name of Mary Jones, followed by the words "formerly, Mary Smith."

There is no law requiring this to be done and I know of no means whereby an executive order with reference to the matter could be enforced. However, an indication by the Governor, of his desire to have notaries conform to such a request, would no doubt serve to accomplish the purpose.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3453.

WEIGHTS AND MEASURES—COUNTY AND STATE SEALER—FEES
FOR SEALING AND MARKING—DISCUSSION OF VARIOUS RE-
LATED QUESTIONS.

COLUMBUS, OHIO, July 23, 1931.

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

GENTLEMEN:—This will acknowledge the receipt of your recent communication, which reads:

"Under date of January 13, 1930, you rendered an opinion to the Prosecuting Attorney of Madison county, being Opinion No. 1393, in which it was held:

'Under the provisions of section 2623, General Code, providing that the county sealer of weights and measures may receive fees for his services, it is mandatory that such fees be charged.'

1. What fee shall be charged for the sealing of the following kinds of weights and measures:

Computing scales, counter scales, spring scales, wagon scales, platform scales, gasoline pumps, oil pumps, wheel load weighers, taxi meters, oil bottles (ruled as measures), oil bottles (ruled as not measures), milk bottles (in large quantities), vehicle tanks, berry boxes (in lots), and fruit baskets (in lots that conform to federal law).

2. How many charges can be made in a year?

3. When and by whom should collection be made?

4. What can be done when a person refuses to pay the fee?

5. What other compensation for marking weights and measures are allowed?"

In answer to your first question, it should be noted that Section 2623, General Code, mentioned in your communication, reads as follows:

"Each sealer may receive for his services, the following fees: For sealing and marking every beam, ten cents; for sealing and marking measures of extension, at the rate of ten cents per yard, not exceeding twenty-five cents for any one measure; for sealing and marking each weight, five cents; for sealing and marking liquid or dry measures, if of one gallon or more, ten cents, and if less than one gallon, five cents; and a reasonable compensation for marking such weights and measures, so as to conform to the standards."

This section in its present form was enacted in 1861, 58 Ohio Laws, page 78.

The purpose of this section is to provide for the inspection and sealing of weights and measures. As to the fees to be charged for inspecting and sealing computing scales, counter scales, spring scales, wagon scales and platform scales, the only provision applicable to these scales in section 2623 of the General Code would seem to be that relating to the sealing and marking of beams.

It may be instructive to note that the first enactment relative to weights and measures in Ohio is found in 33 O. L., 27 (1835), which provided that each sealer shall be entitled to receive for his services at and after the following rates: "For sealing and marking every beam, twelve and one-half cents." This language persists to this day. It is apparent from the language of the statute that it was intended to cover all weighing devices then in existence, and while, technically speaking, the scales mentioned in your inquiry may not be beam scales, nevertheless I believe, in view of the manifest purpose of this section, namely, to provide for the standardization of weights and measures, that the word "beam" in the above sections should be given its generic meaning, and so the fees required to be charged for sealing and marking every beam apply to the sealing and marking of computing scales, counter scales, spring scales, wagon scales and platform scales. It would seem that this section would also apply to wheel load weighers, since they are weighing devices.

As to the charge to be made for taxi meters, it would seem that this would be a measure of extension and should be charged at the rate of ten cents per yard, not exceeding twenty-five cents for any one measure.

As to oil bottles used as measures, the provision for sealing and marking liquid or dry measures, viz., "if of one gallon or more, ten cents, and if less than one gallon, five cents;" would apply.

As far as oil bottles ruled as not measures are concerned, it is evident from your statement that they will not come within the provision of this act, since they are merely containers and not measures. Opinions of the Attorney General for 1930, No. 1759.

As to milk bottles, I am of the opinion that they come within the definition of liquid measure and, therefore, the fee for sealing and marking, if of one gallon or more, is ten cents, and if less than one gallon five cents.

This same provision would also be applicable to vehicle tanks if such tanks are used as measures.

Berry boxes and fruit baskets, when used as measures, no doubt fall within the classification of dry measures and the provision of the above section for marking and sealing liquid or dry measure "if of one gallon or more, ten cents, and if less than one gallon, five cents" would be applicable.

It should be noted that section 2623 provides that a reasonable compensation for marking such weights and measures so as to conform to the standards may be

charged in addition to the fees allowed for inspecting and sealing various weights and measures.

Section 7965, General Code, provides that the Secretary of Agriculture shall be the state sealer and shall make, promulgate and enforce such rules and regulations as may be necessary to the prompt and effective enforcement of the weights and measures laws of this state.

It would seem from this section that the state sealer would have authority to make reasonable rules and regulations concerning the marking and sealing of milk bottles in large quantities, berry baskets in lots, and fruit baskets, when used as measures, such as providing that the inspection of one bottle out of each dozen, or one basket out of each dozen, would be determinative of the fitness of such measures.

As to your second question concerning the number of charges that can be made in one year, section 7965, General Code, as has been noted, provides that the state sealer, i. e., the Secretary of Agriculture, has power to enforce rules and regulations for the prompt and effective enforcement of the weights and measures law of this state. It would seem by this section that the state sealer has the discretion of designating the number of inspections that should be made in order to enforce the laws relative to weights and measures, and it follows that the fees above enumerated may be charged for each inspection, if such inspection is reasonable and not an abuse of discretion. The number of inspections necessary to carry out the weights and measures laws of this state is a question of fact to be determined in each particular instance. It may well be that under some circumstances one inspection every two or three years will suffice, while in other instances an inspection every six months or less might be reasonable and proper.

Coming to your third and fourth questions as to when and by whom should collection of such fees be made and what shall be done in case of refusal to pay such fees, it will be noted that section 2615, General Code, provides:

“By virtue of his office, the county auditor shall be county sealer of weights and measures and shall be responsible for the preservation of the copies of the original standards delivered to his office. It shall be the duty of the county auditor to see that all state laws relating to weights and measures be strictly enforced throughout his county and to assist generally in the prosecution of all violations of such laws.”

It follows from this section that the county auditor has the duty of seeing that the state laws relative to weights and measures are enforced, which laws include section 2623 of the General Code relative to fees.

Section 2977, General Code, reads:

“All fees, costs, percentages, penalties, allowances and other perquisites collected or received by law as compensation for services by a county auditor, county treasurer, probate judge, sheriff, clerk of courts, surveyor or recorder, shall be so received and collected for the sole use of the treasury of the county in which they are elected and shall be held as public moneys belonging to such county and accounted for and paid over as such as hereinafter provided.”

Section 2978, General Code, provides:

“Each probate judge, auditor, treasurer, clerk of courts, sheriff, surveyor and recorder, shall charge and collect the fees, costs, percentages, allow-

ances and compensation allowed by law, and shall give to the person making payment thereof an official receipt in manner and form as may be prescribed by the bureau of inspection and supervision of public offices."

Section 2979, General Code, reads:

"On or before January 15th annually, each of said officers shall file with the prosecuting attorney of his county, a report in writing showing the amount of fees, percentages, penalties, allowances and other perquisites due his office from each person or corporation which has remained due and unpaid for more than one year prior to January 1st, next preceding, and it shall be the duty of the prosecuting attorney to immediately proceed to collect the same by any of the means provided by law, and to pay the amount so collected into the county treasury to the credit of the general county fund. The county auditor shall not issue his warrant to either of said officers for his salary for the month of January in any year until said report has been filed with the prosecuting attorney as herein required."

From the above quoted sections, it is apparent that in the event the fees set forth by section 2623 are unpaid, the same should be certified to the prosecuting attorney for collection.

As to your last question relative to what compensation other than that allowed by section 2623, General Code, may be charged for marking weights and measures, an examination of the statutes discloses no authority for charging such compensation other than that authorized by section 7970, which allows the state sealer of weights and measures to charge the sum of five dollars for inspecting, testing and registering illuminating gas and gas meter-provers.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3454.

POOR RELIEF—TEMPORARY AND PARTIAL—FOR INDIGENT ILLEGITIMATE CHILD HAVING LEGAL SETTLEMENT IN A CITY—CHARGED TO SUCH CITY RATHER THAN TO THE COUNTY.

SYLLABUS:

Where an indigent illegitimate child has a legal settlement in a city, the cost of temporary and partial relief for its support shall be charged to such municipal corporation and not to the county in which such city is located.

COLUMBUS, OHIO, July 24, 1931.

HON. ERNEST M. BOTKIN, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR:—Your recent request for my opinion reads:

"The mother of an illegitimate child has a legal settlement in the city of L. and such settlement has been continuous since a time prior to