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OFFICIAL SHORTHAND REPORTER:

1. COURT COMMON PLEAS—OFFICER OF COURT—STENOGRAPHIC NOTES, COURT PROCEEDING, PUBLIC RECORDS—SECTION 1546 G. C.
2. ATTORNEY, AT WHOSE INSTANCE RECORDS MADE OF COURT PROCEEDINGS, DOES NOT HAVE EXCLUSIVE RIGHT TO TRANSCRIPT.
3. REPORTER REQUIRED, ON REQUEST, PARTY TO SUIT OR HIS ATTORNEY, OR THE COURT, OR UPON REQUEST OF ANY PERSON, TO MAKE A TRANSCRIPT—SECTION 1551 G. C.

SYLLABUS:

1. An official shorthand reporter of the court of common pleas, appointed pursuant to Section 1546, General Code, is an officer of the court, and the stenographic notes taken by him of a proceeding in said court are public records required to be kept in his office.

2. An attorney at whose instance a stenographic record of testimony or other proceedings in the court of common pleas has been made by the official shorthand reporter does not have an exclusive right to a transcript of such proceedings.

3. Under the provisions of Section 1551, General Code, when shorthand notes of a proceeding in the court of common pleas have been taken by the official shorthand reporter said reporter is required, on request of a party to the suit or his attorney, or of the court, to make a transcript of such proceedings, and may make such transcript on request of any other person.

Columbus, Ohio, August 13, 1946

Hon. Paul T. Landis, Prosecuting Attorney
Lima, Ohio

Dear Sir:

I have before me the request of your assistant for my opinion on the following questions:

“1. Does an attorney, who requests the official shorthand reporter of the Common Pleas Court to make a stenographic record of the trial of an uncontested divorce case, have the exclusive right to a transcript of such proceedings?”

2. May an attorney, who is not of record in a case, properly request the official shorthand reporter of the Common Pleas Court to make a stenographic record of proceedings, and if so does such stenographic record become an official record of such court?

3. Are stenographic records, taken by an official shorthand reporter, of proceedings in the Common Pleas Court a matter of public record?"

Section 1546, General Code, reads as follows:

"The court of common pleas of each county 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, and until a successor is appointed and qualified, unless removed by the court, after a good cause shown, for neglect of duty, misconduct in office, or incompetency. Such official shorthand reporter shall take an oath to faithfully and impartially discharge the duties of such position."

Section 1550 makes provision for the compensation of such shorthand reporter and reads in part as follows:

"Each such shorthand reporter shall receive such compensation as the court making the appointment shall fix, not exceeding thirty-six hundred dollars each year in counties where two or more judges of the common pleas court hold court regularly, and in all other counties not more than twenty-four hundred dollars. Such compensation shall be in place of all per diem compensation in such courts. Provided, however, that in case such appointment shall be for a term of less than one year, such court may allow a per diem compensation not exceeding the sum of fifteen dollars per day, for each day such shorthand reporter shall be 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."

By the further provision of the same sections this compensation is payable out of the county treasury upon warrants of the county auditor.

It appears clear that the official stenographer, by reason of these statutes is a public employe and is an officer of the court.

Section 1548 provides as follows:

“Upon the trial of a case in any of such courts, if either party to the suit, or his attorney, requests the services of a shorthand reporter, the trial judge shall grant the request, or such judge may order a full report of the testimony or other proceedings, in which case such shorthand reporter shall cause accurate shorthand notes of the oral testimony or other oral proceedings to be taken, which notes shall be filed in the office of the official shorthand reporter and carefully preserved.”

It will be noted that it is made the duty of the official shorthand reporter to take the testimony in any case either upon the request of a party to the suit, or his attorney, or upon the order of the court on his own initiative.

It is further to be observed that his stenographic notes “shall be filed in the office of the official shorthand reporter and carefully preserved.”

It seems evident that the salary or compensation which he receives from the county is based upon this service in taking stenographic notes of proceedings in court. When transcripts of the testimony so taken are required there is a provision of the statute found in Section 1552, General Code, for additional compensation which may be charged for making such transcripts, it being further provided that “such compensation shall be paid forthwith by the party for whose benefit a transcript is made.” Section 1551, General Code, provides as follows:

“When shorthand notes have been taken in a case as herein provided, if the court, either party to the suit, or his attorney, requests transcripts of all or any portion of such notes in long-hand, the shorthand reporter reporting the case shall cause full and accurate transcripts thereof to be made 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.”

It is to be observed that when a transcript is requested by the court or by a party to the suit or his attorney the shorthand reporter is *required* to make them for the use of such court or party.

Your first question does not make it clear whether the attorney who requested the official shorthand reporter to make a stenographic record of the trial of the case is or is not the attorney of record for a party to

the case. I do not consider that it makes any difference whether he is or is not an attorney of record in the case. In either event, his request is to the court and the court is required to grant the request if made by an attorney for either of the parties but is privileged to grant the request if made by an attorney who is not of record or by any other person. As hereinabove pointed out, the court may, without request from anyone, require the testimony to be taken. Regardless of who makes the request, it appears to me that the reporter, being an appointee of the court and on a salary paid by the county, if present in court at a trial and taking the testimony, must be assumed to be there either by the express order of the court or with his official sanction. Therefore, he could not be considered as being the personal employe of an attorney at whose instance he was called in. As heretofore pointed out by the terms of the statute, the notes which he takes are to be filed and carefully preserved in his office. This clearly implies that such notes are a part of the public record. It seems to me to follow of necessity that the attorney who was responsible for causing him to take such notes could not be considered as having an exclusive right to a transcript of the proceedings.

Your second question is closely connected with the first but you expressly indicate that the request for a stenographic record has come from an attorney who is not the attorney of record of either of the parties to the case. The answer which I have given to your first question appears to me to cover this situation, and as I have hereinabove indicated the stenographic notes taken by the official shorthand reporter do, in my opinion, become a part of the public records of his office. When it comes to securing a transcript from such record it appears from the statute referred to that the only person who would have a right to *demand* a transcript would be the party to the suit or his attorney or the court itself. However, there is no prohibition in the statute against the reporter making a transcript for an outsider if he sees fit to do so.

Your third question does not appear to me to introduce any new element and what has been said above may be considered as an answer to that question.

In specific answer to your questions, it is my opinion :

1. An official shorthand reporter of the common pleas court, appointed pursuant to Section 1546, General Code, is an officer of the

court, and the stenographic notes taken by him of a proceeding in said court are public records required to be kept in his office.

2. An attorney at whose instance a stenographic record of testimony or other proceedings in the court of common pleas has been made by the official shorthand reporter does not have an exclusive right to a transcript of such proceedings.

3. Under the provisions of Section 1551, General Code, when shorthand notes of a proceeding in the court of common pleas have been taken by the official shorthand reporter, said reporter is required, on request of a party to the suit or his attorney, or of the court, to make a transcript of such proceedings, and may make such transcript on request of any other person.

Respectfully,

HUGH S. JENKINS,
Attorney General