

710

1. CORONER, ACTING—COUNTY WHERE POPULATION LESS THAN FOUR HUNDRED THOUSAND—APPOINTED UNDER SECTION 2829 G. C., PRIOR TO ITS AMENDMENT BY 96 GENERAL ASSEMBLY, EFFECTIVE OCTOBER 12, 1945, ENTITLED TO RECEIVE UP TO SAID DATE FEES ALLOWED CORONERS BY SECTION 2866 G. C.—NOT ENTITLED TO DIFFERENCE BETWEEN FEES SO RECEIVED AND ONE HUNDRED AND FIFTY DOLLARS AS PROVIDED BY SECTION 2866-1 G. C.
2. CORONER REGULARLY ELECTED AND QUALIFIED—ABSENT FROM COUNTY—MILITARY SERVICE—ENTITLED TO FULL COMPENSATION PROVIDED BY LAW FOR HIS OFFICE—NO DEDUCTION MAY BE MADE OF ANY AMOUNT PAID TO ACTING CORONER OR ASSISTANT CORONER FOR SERVICES DURING ABSENCE OF CORONER.

## SYLLABUS:

1. An acting coroner in a county having a population of less than four hundred thousand, who was appointed pursuant to Section 2829 of the General Code, prior to its amendment by the 96th General Assembly, effective October 12, 1945, was entitled to receive up to said date the fees allowed coroners by Section 2866 of the General Code, but was not entitled under any circumstances, to the difference between the fees so received and the sum of one hundred and fifty dollars as provided by Section 2866-1 General Code.

2. When a regularly elected and qualified coroner is absent from the county by reason of military service he is entitled to the full compensation provided by law for his office, without deduction of any amount paid to an acting coroner or assistant coroner for services rendered during his absence.

Columbus, Ohio, January 26, 1946

Bureau of Inspection and Supervision of Public Offices  
Columbus, Ohio

Gentlemen:

I have before me your communication requesting my opinion and reading as follows:

“Section 2866-1 of the General Code, reads as follows:

‘In counties having a population, according to the last federal census, of less than four hundred thousand the total compensation paid to the coroner as fees, under all sections of the General Code, in no case shall exceed five thousand dollars per annum or be less than one hundred and fifty dollars per annum. If the fees in any one year are less than the minimum compensation allowed by law then such coroner shall be allowed the difference up to one hundred and fifty dollars to be paid by the county commissioners out of the emergency or contingent fund.’

In a county whose population is less than one hundred thousand, the coroner is absent from the county by reason of serving in the armed forces, and during his absence the county commissioners have appointed a physician to serve as acting coroner. This acting coroner has drawn fees in accordance with Section 2866, General Code, for each inquest. The total fees drawn by such acting coroner amount to \$78.10.

May we respectfully ask your opinion on the following questions:

1. Is such acting coroner, who has served during the entire year, entitled to the difference between the fees drawn by him and the minimum compensation provided in said section 2866-1 General Code?
2. While the regularly elected and qualified coroner has been absent from the county during the year, would he be entitled to the minimum compensation provided for the office, or should the fees drawn by the acting coroner be deducted from the minimum compensation, and the coroner be entitled to the balance remaining after such deduction?”

Prior to October 12, 1945, the effective date of Senate Bill No. 92 passed by the recent General Assembly, Section 2866 General Code was in effect reading as follows:

“Coroners shall be allowed the following fees: For view of dead body, three dollars; for drawing all necessary writings, for every one hundred words, ten cents; for traveling each mile, ten cents; when performing the duties of sheriff, the same fees as are allowed to sheriffs for similar services.”

Section 2866-1 General Code then in effect, provided as follows:

“In counties having a population, according to the last federal census, of less than four hundred thousand the total compensation paid to the coroner as fees, under all sections of the General Code, in no case shall exceed five thousand dollars per annum or be less than one hundred and fifty dollars per annum. If the fees in any one year are less than the minimum compensation allowed by law then such coroner shall be allowed the difference up to one hundred and fifty dollars to be paid by the county commissioners out of the emergency or contingent fund.”

Both of the sections above quoted were repealed by the act above referred to, and in their place there was enacted Section 2855-3 General Code, fixing the compensation of all coroners on the basis of a minimum salary of \$400 in counties having a population under 25,000 and a graduated scale of additional compensation upon that minimum based on population. By the same act Sections 2855-4 to 2855-18 of the General Code were enacted, relating to the office of coroner.

By the same act Section 2829, General Code, was amended. Prior to its amendment that section read as follows:

“When the office of coroner becomes vacant by death, resignation, expiration of the term of office or otherwise, the county commissioners shall appoint a suitable person to fill the vacancy. When, for thirty days or more, the coroner is to be absent from the county, is in military service, or unable from sickness or other causes to discharge the duties of his office, the *county commissioners* shall appoint a suitable person as acting coroner. Such appointees shall have the qualifications required of coroners and shall give bond and take the oath of office as prescribed for the coroner. When such person is *temporarily acting in the capacity of coroner* he shall receive the compensation *equivalent to that allowed by law to coroners in such cases*. The health commissioner of a general health district may be appointed as acting coroner when the coroner is temporarily absent from the county and in such capacity shall be entitled to the fees provided by law.

When both the coroner and the acting coroner are absent from the county, or unable from sickness or other cause to discharge the duties of his office, a justice of the peace of the county

shall have the powers and duties of the coroner to hold inquest in the presence of the county sheriff or deputy sheriff. When acting in the capacity of coroner, a justice of the peace may receive the fees allowed by law to coroners in such cases.”

(Emphasis added.)

As amended, said Section 2829 was given the following reading:

“When the office of coroner becomes vacant by death, resignation, expiration of the term of office or otherwise, or when the coroner becomes permanently unable to perform the duties of coroner, the county commissioners shall appoint a person with the qualifications of a coroner to fill the vacancy, who shall give and take the oath of office as prescribed for the coroner. When the coroner is absent temporarily from the county, or when on duty with the armed services of the United States or the state militia, or with the American Red Cross, or when unable to discharge the duties of his office, the coroner may appoint a person with the qualifications of coroner to act as coroner during such absence, service or disability.”

I. Taking up your questions in their order, it will be observed that Section 2829 General Code, as it originally stood, provided for an acting coroner to be appointed by the county commissioners “When, for thirty days or more, the coroner is to be absent from the county, is in military service, or unable from sickness or other causes to discharge the duties of his office.” It was further provided that such appointee should have the qualifications required of the coroner, should give bond and take the oath of office, but no term of office was prescribed and plainly his tenure would only be until such time as the coroner returned to his post. That such appointment was regarded as purely temporary is shown by the language of the statute in providing that “when such person is temporarily acting in the capacity of coroner he shall receive the compensation equivalent to that allowed by law to coroners in such cases.” That compensation was the compensation allowed by Section 2866 which I have hereinabove quoted. Since such temporary appointee could not be said to have been appointed for a year or for any term, I consider that the provision of Section 2866-1 *supra*, guaranteeing to the coroner a minimum of \$150.00 *per annum* would not apply to such acting coroner. The use of the words “such cases” appears to me to relate to the specific fees which he was allowed by Section 2866. The provision of Section 2866-1, giving the coroner a certain minimum compensation for each year appears

to me to have been based upon the fact that he is elected for a definite term consisting of four years. If in any one of his four years of office, his compensation did not reach \$150.00, the deficit was to be paid out of the county treasury.

On September 27, 1945, I had occasion to render an opinion as to the effect on a coroner who was then in office, of the repeal of Sections 2866 and 2866-1 of the General Code, and held:

“The provisions of Section 2855-3, General Code, enacted by the 96th General Assembly will not be operative to change the compensation of a coroner who is in office at the effective date of said enactment, and he will continue during his then existing term to receive the compensation provided by the law in force when such term began.” (Opinion No. 469.)

That opinion was grounded on an interpretation of Section 20 of Article II of the Constitution, which reads:

“The General Assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished.”

It must be quite evident that the principle underlying that opinion must be confined in its application to the duly elected coroner, and that so far as concerns an “acting coroner” who had been appointed by the county commissioners and was serving at the time of the repeal of the old sections, both his office and the basis for his compensation ceased to exist.

As hereinabove pointed out, said original Section 2829 was amended by the new act, which became effective October 12, 1945. Thereafter there was no such officer known to the law as acting coroner. The section as amended provided that the coroner might appoint some one to act during his absence, but said nothing about compensation for such appointee. The new act did, however, provide in Section 2855-17 that *the coroner* might appoint assistant coroners, one of whom might be designated as chief deputy, and it is further provided by Section 2855-18 that such deputy and assistant coroners should receive salaries to be fixed by the coroner and payable from the county treasury, all within the aggregate amount appropriated by the county commissioners for the office.

Accordingly, even if an acting coroner, so called, who was appointed under the old law, was allowed to continue throughout a year and beyond the time of the effective date of the new act, the principle underlying that opinion would in no way operate to give him the right to continue to draw compensation on a scale specified in the statute which had been repealed. After such effective date his compensation would be whatever the coroner chose to allow.

2. Your second question relates to the rights of the coroner to his compensation during his absence in military service. The question is raised whether there should be deducted from his compensation the amounts drawn by the acting coroner.

It will be noted at the outset that the statutes to which I have referred do not provide that the compensation to be paid either the acting coroner or the deputy or assistant coroner shall in any case be deducted from the compensation prescribed by law for the coroner. It is well settled that an elected public officer has a right to his salary even though he may be absent from his work for a considerable time. 46 C. J. 1014; 43 Am. Juris. 161. This proposition has been the subject of discussion in a number of opinions of this office. See 1940 Opinions, Attorney General, page 982; 1942 Opinions, Attorney General, page 637. The syllabus of the opinion last referred to, reads as follows:

“Where a county prosecuting attorney or a county engineer enlists in some branch of the military service or is drafted into the service of the United States Government during the present war, each would carry the responsibility for his position during his absence in such service and would be entitled to receive the salary pertaining thereto.”

The case of *State, ex rel. Clinger v. White*, 143 O. S. 175, decided April 12, 1944, is decisive of the question of the right of an elected county officer to receive his salary although he is absent in the military services and his duties have been performed by someone else who was paid by the county. It was held in that case:

“Where there is no specific provision of statute on the subject, the incumbent of a county office does not lose title to his office or his right to the salary or compensation connected therewith by reason of mere absence from the county.”

The court referred to the provisions of Section 2397-1 General Code, which authorizes the county commissioners to declare vacant the office of any county officer who should be absent from the county for ninety consecutive days except in cases of sickness or injury, and to Section 2397-2 General Code, which provides that the foregoing provision should not apply to a county officer while in the active military service of the United States, and the court further held:

“A prosecuting attorney who enlists in such service does not by reason of his absence while in such service vacate his office as prosecuting attorney, and upon demand is entitled to receive the salary prescribed by law.”

The holding in the above case applies with equal force to a coroner, and it appears clear that when he is absent from his office on military service, he is entitled to the compensation prescribed by law, without any deduction by reason of compensation received by an acting coroner or assistant coroner during his absence.

In specific answer to your questions it is my opinion:

1. An acting coroner in a county having a population of less than four hundred thousand, who was appointed pursuant to Section 2829 of the General Code, prior to its amendment by the 96th General Assembly, effective October 12, 1945, was entitled to receive up to said date the fees allowed coroners by Section 2866 of the General Code, but was not entitled under any circumstances, to the difference between the fees so received and the sum of one hundred and fifty dollars as provided by Section 2866-1 General Code.

2. When a regularly elected and qualified coroner is absent from the county by reason of military service he is entitled to the full compensation provided by law for his office, without deduction of any amount paid to an acting coroner or assistant coroner for services rendered during his absence.

Respectfully,

HUGH S. JENKINS,  
Attorney General.