

153.

APPROVAL, BONDS OF VILLAGE OF FREDERICKTOWN, KNOX COUNTY, OHIO—\$17,596.14.

COLUMBUS, OHIO, March 7, 1927.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

154.

WITNESS AND MILEAGE FEES IN CRIMINAL CAUSES.

SYLLABUS:

1. *A witness subpoenaed in a criminal cause before the municipal court of Cincinnati is limited to the one witness fee of one dollar per day, and five cents for each mile necessarily traveled from his place of residence to the place of giving such testimony and return, provided the distance be more than one mile, irrespective of how many causes he appears in before said court during the day, unless the court otherwise directs by special order.*

2. *The court may, if it sees fit, allow a witness a witness fee for each appearance before the court on any day provided such appearances are on separate matters.*

COLUMBUS, OHIO, March 8, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your letters dated February 24th and March 1st, 1927, wherein you inquire:

“When witnesses are subpoenaed to appear in the municipal court of Cincinnati in several cases to be tried on the same day, are such witnesses entitled to a fee and mileage in each case tried? Such witnesses are subpoenaed from points in Hamilton county in each instance.

The question relates to the payment of witness fees and mileage in criminal cases.”

The legislation establishing each municipal court must be examined in order to determine what, if any, special provisions have been made in reference to witness fees in such courts.

Section 1558-1, General Code, provides:

“That hereafter the police court in the city of Cincinnati shall be a court of record and shall be styled “The Municipal Court of Cincinnati, * * * ”

Section 1558-13 (Section 13 of an act which appears in 103 Ohio Laws, 279, which act created the municipal court of Cincinnati) provides:

“In all criminal cases and proceedings the practice and procedure and

mode of bringing and conducting prosecutions for offenses and the powers of the court in relation thereto shall be the same as those which are now, or may hereafter be possessed by police courts in municipalities unless otherwise provided herein."

On February 8, 1921, (109 Ohio Laws 12), the legislature enacted Section 3005 of the General Code, the title of which act is :

"To make the taxable fees in criminal cases before the municipal courts, the same as those provided by law for justices of the peace, mayors and police courts."

Said section provides :

"In each municipality where a municipal court is provided by law, the following fees, and no more, shall be taxed as part of the costs and be included in the judgment in all criminal proceedings.

* * * * *

For Witnesses: The same fees provided under Section 3014, General Code, and to be paid and accounted for in the manner provided therein.

* * * * *

That all sections or parts of sections in the special acts establishing such municipal courts, now in force, which are in conflict herewith be and the same are hereby repealed."

The above quoted section fixes the fees and costs in criminal proceedings in the municipal court of Cincinnati.

In considering your inquiry it is necessary to examine the provisions of Sections 3011, 3012 and 3014 of the General Code.

Section 3011 provides that each person subpoenaed as a witness shall be allowed one dollar for each day's attendance and mileage allowed in courts of record in all cases and proceedings not specified in that chapter.

Section 3012, General Code, provides that for each day's attendance at a court of record in civil cases, each witness shall receive one dollar, and five cents for each mile necessarily traveled from his place of giving such testimony and return, provided the distance be more than one mile.

Section 3014, General Code, which relates to witness fees in criminal cases, provides :

"Each witness attending under recognizance or subpoena, * * * before the court of common pleas * * * or other court of record in criminal causes, shall be allowed the same fees as in civil cases, to be taxed in only one cause, when attending in more causes than one on the same days, unless otherwise directed by special order of the court. * * * "

From the foregoing, it will be seen that there is a fixed rule provided by statute for the charging of fees and mileage in criminal cases.

Section 3014, supra, provides that each witness attending under recognizance or subpoena in criminal causes shall receive one dollar, and five cents for each mile necessarily traveled from his place of residence to the place of giving such testimony and return, provided the distance be more than one mile "to be taxed in only one cause, when attending in more causes than one on the same days, unless otherwise directed by special order of the court."

Under the provisions of the sections above quoted it is clear that a witness is limited to the one witness fee of one dollar irrespective of how many causes he appears in before the court in one day, unless the court otherwise directs by special order. If the court sees fit it may allow any witness a witness fee for each appearance before said court on any day, provided such appearances are on separate matters, since Section 3014, *supra*, vests that discretion in the court.

In view of the above, I am of the opinion that a witness subpoenaed to appear in a criminal cause before the municipal court of Cincinnati is limited to the one witness fee of one dollar per day, and five cents for each mile necessarily traveled from his place of residence to the place of giving such testimony and return, provided the distance be more than one mile, irrespective of how many causes he appears in before said court during the day, unless the court otherwise directs by special order. The court may, under the provisions of Section 3014, General Code, if he sees fit, allow a witness a witness fee for each appearance before the court on any day, provided such appearances are on separate matters. In no event would any such witness be entitled to more than one mileage fee on any day, whether he testifies in one or several causes.

Respectfully,
EDWARD C. TURNER,
Attorney General.

155.

APPROPRIATION "PROSECUTION AND TRANSPORTATION OF CONVICTS"—CANNOT BE USED FOR PAYMENT OF CLAIMS FOR COURT COSTS.

SYLLABUS:

The appropriation "Prosecution and Transportation of Convicts" found in the appropriation bill of the last General Assembly, cannot be used for the payment of claims for court costs or other costs incurred by the accused in securing a reversal of a judgment, as provided in Section 13755 of the General Code.

COLUMBUS, OHIO, March 8, 1927.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of recent date, reading as follows:

"We respectfully request your review of Attorney General's Opinion No. 2099, dated December 20, 1924, interpreting the provision of Section 13755, General Code as amended 108 O. L., page 36 (Part 1).

I have on file in this office a large number of claims presented against the state for services in preparing transcripts in minor courts, which I have refused to pay as not being legal claims against the appropriation 'Prosecution and Transportation of Convicts—\$225,000.00'. House Bill 517, 86th General Assembly.

I had personal knowledge that such expenditures were not included in the budget supporting said appropriation bill.

I believe the inquiries propounded in said Opinion No. 2099 will present