

a former Attorney General held in Opinions of the Attorney General for 1925, at page 16, as follows:

“Section 4270, General Code, does not apply to fees earned by a mayor, marshal or chief of police in state cases, but such fees should be paid to such officers for their personal use.”

To the same effect is an opinion of the Attorney General found in Opinions of the Attorney General for the year 1928, Vol. II, page 1088, the syllabus of which reads:

“In all state cases, by the terms of Section 4270, General Code, the mayor of a city or village is entitled to hold the legal fees taxed in his favor.”

If, however, you have reference to violations of criminal ordinances, a different situation exists. As I have already indicated, Section 4270, before its last amendment in 112 O. L. 141, provided that all fees in ordinance cases should be paid into the village treasury, except that council could authorize the retention of such fees by the marshal, but not his expenses. The amendment, as above stated, took away the right of council to authorize the retention of ordinance fees, and now all such fees must be paid into the village treasury.

Based on the foregoing, you are specifically advised that:

1. A salaried village marshal may retain the dollar fee and mileage, as provided by Section 3347, General Code, for serving warrants of arrest, if the criminal case involved is one resulting from a violation of a statute.

2. A salaried village marshal may not retain the dollar fee and mileage, as provided by Section 3347, General Code, for serving warrants of arrest, if the criminal case involved is one resulting from a violation of an ordinance.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1388.

DIVISION OF ACCOUNTS AND CONTROL—CHIEF'S OFFICE WITHIN
UNCLASSIFIED SERVICE.

SYLLABUS:

The office of chief of the division of accounts and control created by virtue of the provisions of Section 154-8 of the General Code is in the unclassified civil service of the state by virtue of the provisions of Section 154-19 of the General Code.

COLUMBUS, OHIO, January 13, 1930.

The State Civil Service Commission of Ohio, Wyandotte Building, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your letter of recent date which is as follows:

“Section 154-8 of the General Code of Ohio reads in part as follows:

‘With the approval of the Governor, the director of each department shall have authority to consolidate any two or more of the offices created in his department by Section 154-6 of the General Code, or to reduce the number of or create new divisions therein.’

Under the authority of this section there has been created in the Department of Finance, a Division of Accounts and Control.

Section 154-19 of the General Code reads as follows:

'All offices created by Sections 154-5 and 154-6 of the General Code shall be in the unclassified civil service of the state.'

Is the office of Chief of the new Division of Accounts and Control to be considered as having been created by Sections 154-5 or 154-6 of the General Code, (a requirement under 154-19 to be included in the unclassified civil service of the state) when such position is created in that department under authority of Section 154-8?

In other words, will you kindly inform us, in your opinion, whether the position in question is in the classified or unclassified service of the state."

Section 154-5 of the General Code provides in part as follows:

"In each department there shall be an assistant director, who shall be designated by the director to fill one of the offices within such department, enumerated in Section 154-6 of the General Code, or as the head of one of the divisions created within such department as authorized by Section 154-8 of the General Code. * * * ."

Section 154-6 provides in part as follows:

"Offices are created within the several departments as follows:

In the Department of Finance—

Superintendent of Budget.

Superintendent of purchases and printing.

* * * ."

Section 154-8 provides in part as follows:

"With the approval of the Governor, the director of each department shall have authority to consolidate any two or more of the offices created in his department by Section 154-6 of the General Code, or to reduce the number of or create new divisions therein."

Section 154-19 provides in part as follows:

"All offices created by Sections 154-5 and 154-6 of the General Code, shall be in the unclassified civil service of the state."

You will note that Section 154-8 of the General Code is adopted by reference in Section 154-5 of the General Code, and therefore is as much a part of said section as if its terms had been incorporated therein. It appears to me that the Legislature intended to exempt from the classified civil service of the state the offices created under the terms of Section 154-6 of the General Code and the divisions created under the terms of Section 154-8 of the General Code. The legislative intent is borne out by the provisions of Section 154-7 of the General Code, which provides as follows:

"The officers mentioned in Sections 154-5 and 154-6 of the General Code shall be appointed by the director of the department in which their offices are respectively created, and shall hold office during the pleasure of such director."

There can be no doubt but that the head of a division created under the terms of

Section 154-8 of the General Code is an "officer mentioned" in Section 154-5 of the General Code.

In specific answer to your inquiry, I am of the opinion that the office of chief of the division of accounts and control created by virtue of the provisions of Section 154-8 of the General Code is in the unclassified civil service of the state by virtue of the provisions of Section 154-19 of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1389.

REAL ESTATE—DEvised BY WILL—APPLICATION TO BE FILED WITH
PROBATE JUDGE REQUESTING ORDER FOR TRANSFER UPON TAX
DUPLICATE AND CERTIFICATE TO COUNTY RECORDER.

SYLLABUS:

Proceedings in connection with a certificate of real estate devised discussed.

COLUMBUS, OHIO, January 13, 1930.

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

GENTLEMEN:—In your recent communication you request my opinion upon the following:

"Section 10526 of the General Code provides that when a will is admitted to probate which devises real estate situated in the county where it is recorded, upon recording such will the court shall immediately transmit to the recorder of the county in which the will is recorded, a certificate containing the fact of such filing and probate, the name of the testator, the name of the devisees of the real estate, and a description of such real estate as the will contains, and separately with each parcel the names of the devisees thereof, together with the volume and page of the record of the will. The following section requires the recorder to record this certificate in the books provided for the recording of deeds and index such records in the name of the testator as grantor and the devisees as grantees in the index provided for the record of deeds.

Section 2768 of the General Code provides that the county recorder shall not record any deed of absolute conveyance of land or any conveyance, absolute or otherwise, or minerals or mineral rights until it has been presented to the county auditor, and by him endorsed 'transferred' or 'transfer not necessary.'

Section 2573 of the General Code provides for transfers by the county auditor.

Question 1. In the certificate made by the court is it necessary that the particular description of the real estate devised be given or is such a description as is contained in the will all that is necessary?

Question 2. Does Section 2768, G. C., require that the certificate which is to be recorded by the county recorder be presented to the county auditor for transfer before recording and, if not, how will the county auditor get the property in the name of the devisees on his tax list duplicate?"

Section 10526 of the General Code, to which you refer, provides: