

1382.

WITNESS FEES—IN STATE CASE BEFORE MAYOR.

SYLLABUS:

Each witness in a state case attending before a mayor under subpoena is entitled to receive one dollar for each day's attendance, and five cents for each mile necessarily traveled from his place of residence to the place of giving testimony and return, provided the distance be more than one mile, to be paid out of the county treasury upon the certificate of the mayor whether the defendant be discharged upon preliminary hearing or bound over to the grand jury.

COLUMBUS, OHIO, December 16, 1927.

HON. F. E. CHERRINGTON, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter dated December 15, 1927, which reads as follows:

“The matter of payment of witness fees by the county in state cases before the mayor of our city has been submitted to me.

Section 4555, General Code, reads as follows:

‘In cases for the violation of ordinances, the fees of witnesses and jurors shall be paid on the certificate of the officer presiding at the trial, from the corporation treasury, AND IN STATE CASES ON LIKE CERTIFICATE FROM THE COUNTY TREASURY.’

That part of the foregoing section which I have capitalized being the part inquired about; whether when a witness is called before the mayor in a state case, the mayor shall make a certificate which is delivered to the witness, when discharged or at completion of the case, and on which the witness receives payment, upon indorsement by the county auditor from the county treasury.

This inquiry particularly alludes to liquor law violation cases arising outside of the municipal corporation.

It has been the rule here followed in state cases where the party tried for a criminal offense is bound over to the grand jury that witness fees follow the case and if a conviction is had in the common pleas court such fees are assessed as part of the costs and are paid to the witness *after* the costs are collected. If no conviction was had such cases have been treated as though coming up from a justice of the peace in the way of an allowance by the county commissioners for ‘lost fees.’

In this matter I would like to have your opinion as to whether the mayor has authority, by virtue of the above section, to make a certificate for such fees to the county auditor, much the same as the clerk of courts makes in criminal cases before the common pleas court, upon which payment should be made by the county treasurer upon proper endorsement by the county auditor?”

The question which you present has been considered by this department in Opinion No. 721, dated July 11, 1927, Opinions, Attorney General for 1927, the first paragraph of the syllabus of which reads as follows:

"1. Each witness in a state case attending before a mayor under subpoena is entitled to receive one dollar for each day's attendance, and five cents for each mile necessarily traveled from his place of residence to the place of giving testimony and return, provided the distance be more than one mile, to be paid out of the county treasury upon the certificate of the mayor whether the defendant be discharged upon preliminary hearing or bound over to the grand jury."

The above opinion, a copy of which I am herein enclosing, is determinative of the question which you present.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1383.

FRANKLIN COUNTY TUBERCULOSIS HOSPITAL—REMOVAL OF SUPERINTENDENT—DUTY OF CIVIL SERVICE COMMISSION.

SYLLABUS:

1. *Mrs. A. P. Lawin is at the present time the actual head or superintendent of the Franklin County Tuberculosis Hospital and is entitled to act as such, during good behavior and efficient service, until such time as the board of county commissioners of Franklin County determines to and does appoint a suitable person medical superintendent of said hospital.*

2. *Upon the appointment of such medical superintendent, Mrs. Lawin will cease to have entire charge and control of the hospital, but will continue to perform any other duties which have been exercised by her as superintendent of nurses, during good behavior and efficient service, subject to the right of the board of county commissioners at any time to abolish the position or change the duties thereof. If the position of superintendent of nurses is abolished, such abolishment must be in good faith and must not leave the door open to creating the same position under another name and filling the same by employing a person other than Mrs. Lawin.*

3. *It is the duty of the civil service commission, upon the request of the county commissioners, to certify a list of eligible candidates from which an appointment can be made to the position of medical superintendent of the Franklin County Tuberculosis Hospital, or if such list is not available to hold a competitive examination to provide such list.*

COLUMBUS, OHIO, December 17, 1927.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your recent communication reading as follows:

"We are attaching hereto recent correspondence between this office and the Franklin County commissioners relative to the situation at the Franklin County Tuberculosis Hospital. You will note their letter of November 12, 1927, states their opinion that Mrs. Aloysia Lawin is not in law the superintendent of that institution, and they request this commission to certify to them an eligible list of candidates for that position and in the absence of an eligible list to fill such position by provisional appointment.