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1. TRAVELING EXPENSES — SHORTHAND REPORTER — COURT OF APPEALS—BY REASON PROVISIONS OF SECTION 1.24 RC, PROVISIONS OF SECTION 2501.17 RC ARE A RESTATEMENT WITHOUT SUBSTANTIVE CHANGE OF FORMER SECTION 1521 GC.
2. SECTION 2501.17 RC PROVIDES FOR PAYMENT FROM STATE TREASURY, ACTUAL EXPENSES, TRAVELING OF SHORTHAND REPORTERS — COURTS OF APPEALS — PAYMENT IN LIKE MANNER AS COMPENSATION OF SUCH OFFICIALS.

SYLLABUS:

1. By reason of the provisions of Section 1.24, Revised Code, the provisions of Section 2501.17, Revised Code, must be deemed a mere restatement without substantive change of former Section 1521, General Code.

2. Section 2501.17, Revised Code, Section 1521, General Code, provides for the payment from the state treasury of the actual expenses of traveling of shorthand reporters of courts of appeals in like manner as the compensation of such officials is paid.

Columbus, Ohio, December 6, 1955

Hon. Bernard W. Freeman, Prosecuting Attorney
Huron County, Norwalk, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Our Clerk of Courts has requested me for your opinion as to who is responsible for paying the expenses of the shorthand reporter of the Court of Appeals, when he travels from his home county to our county.

“Revised Code Section 2501.17 sets forth compensation expenses of shorthand reporter and provides in part as follows:

“‘Such reporters shall receive their actual expenses for travelling when attending court in any county other than that which they reside, to be paid as provided by such section. Such expenses shall not exceed four hundred dollars in a year.’

“If, in your opinion it is expenses that should be paid out of the cases being heard by the Court of Appeals, then should such expenses be pro-rated among the number of cases heard?

“I am aware, of course, that the 1923 Ohio Attorney General’s Opinions, Page 752, and I am wondering if that ruling still holds and if it will cover traveling expenses for the shorthand reporter of the Court of Appeals.”

Section 2501.17, Revised Code, referred to in your inquiry, reads as follows:

“The compensation of a shorthand reporter appointed under section 2501.16 of the Revised Code, shall be fixed by the court of appeals and payable from the state treasury upon the certificate of the presiding judge of the district in which such reporter serves. The total compensation paid to shorthand reporters in any district in a year shall not exceed three thousand dollars. Such reporters may receive additional compensation for transcripts of evidence, the fee therefor to be fixed by the judges of the court of appeals and paid and collected in the same manner as the fees for transcripts furnished by the official shorthand reporters of the court of common pleas under section 2301.24 of the Revised Code. Such reporters shall receive their actual expenses for traveling when attending court in any county other than that in which they reside, to be paid *as provided by such section*. Such expenses shall not exceed four hundred dollars in a year.” (Emphasis added.)

The expression "to be paid as provided in such section" would appear at first impression to have reference to Section 2301.24, Revised Code, the section which is next earlier mentioned in this section. This section, however, relates to fees charged for making transcripts, copies of decisions, and the like, and contains no provisions which could be applied in the payment of travel expense.

It must be remembered that Section 2501.17, Revised Code, is a mere restatement without substantive change of former Section 1521, General Code. See Section 1.24, Revised Code. Former Section 1521, General Code, read as follows:

"The compensation of such shorthand reporter shall be fixed by the court and be payable from the state treasury upon the certificate of the presiding judge of the district in which he serves. The total compensation paid to shorthand reporters in any district in a year shall not exceed the sum of three thousand dollars. Such shorthand reporters may receive additional compensation for transcripts of evidence, the fees therefor to be fixed by the judges of the courts of appeals and paid and collected in the same manner as the fees for transcripts furnished by the official shorthand reporters of the common pleas court. Such shorthand reporters shall also receive their actual expenses for traveling when attending court in any county other than that in which they reside, *to be paid in like manner*: and in no event shall such expense exceed four hundred dollars in a year."

(Emphasis added.)

Here it will be noted that the expression to be interpreted is "to be paid in like manner" rather than "as provided in such section." Ordinarily an expression of this sort is deemed to refer to the last antecedent, in this case the "additional compensation" provision in the third sentence in Section 1521, *supra*, but such rule is not to be applied where the context indicates otherwise. See Sutherland, *Statutory Construction*, 3rd Edition, Volume 2, pp. 448, 449, Section 4921.

Referring to the history of this section we find that the "additional compensation" provision was inserted therein by the enactment of Amended Senate Bill No. 32, 86th General Assembly, 111 Ohio Laws 110, 111. Prior thereto, this section as enacted in Amended Senate Bill No. 36, 80th General Assembly, 103 Ohio Laws 405, 412, read as follows:

"The compensation of such stenographer shall be fixed by the court and be payable from the state treasury upon the certificate of the presiding judge of the district in which he serves. The total compensation paid to stenographers in any district in a year

shall not exceed the sum of eighteen hundred dollars. Such stenographers shall also receive their actual expenses for traveling when attending court in any county other than that in which they reside, *to be paid in like manner*; and in no event shall such expense exceed three hundred dollars in a year."

(Emphasis added.)

The language and intra-sectional arrangement thereof in this enactment quite clearly shows that the term "in like manner" refers to payment "from the state treasury upon the certificate of the presiding judge." Of this language it was said in Opinion No. 940, Opinions of the Attorney General for 1923, at page 753:

"Section 1521 above mentioned, governing the compensation of such stenographers is clear and unequivocal in its terms providing that the compensation is limited to eighteen hundred dollars in amount in any given years, and is payable from the state treasury. It also provides that the actual expenses of stenographers for 'traveling when attending court in any county other than that in which they reside, to be paid in like manner,' not exceeding three hundred dollars in any given year."

I am unable to perceive anything in the subsequent amendments indicative of a legislative intent to change this meaning, especially as the "additional compensation" provision later inserted in this section does not lend itself to application in the matter of meeting travel expense.

Accordingly, in specific answer to your inquiry it is my opinion that:

1. By reason of the provisions of Section 1.24, Revised Code, the provisions of Section 2501.17, Revised Code, must be deemed a mere restatement without substantive change of former Section 1521, General Code.

2. Section 2501.17, Revised Code, Section 1521, General Code, provides for the payment from the state treasury of the actual expenses of traveling of shorthand reporters of courts of appeals in like manner as the compensation of such officials is paid.

Respectfully,

C. WILLIAM O'NEILL
Attorney General