

2142

1. EXPENSES—SECTION 2253 G. C. DOES NOT AUTHORIZE PAYMENT OF EXPENSES FOR A JUDGE WHO LEAVES HIS PLACE OF RESIDENCE ON DAY PRECEDING ASSIGNMENT TO ANOTHER COUNTY—TRANSPORTATION EXPENSES ALLOWED—EXPENSES ALLOWED COVER ONLY DAYS OF HOLDING COURT UNDER ASSIGNMENT.
2. SECTION 2253 G. C. DOES NOT AUTHORIZE PER DIEM FOR ANY DAYS OTHER THAN DAYS OF ASSIGNMENT FOR JUDGE HOLDING COURT IN COUNTY OTHER THAN PLACE OF RESIDENCE—SECTION 1469 G. C.

## SYLLABUS:

1. Section 2253 of the General Code does not authorize the payment of expenses, other than transportation expenses, for a judge who finds it necessary to leave his place of residence on the day preceding his assignment to another county. Expenses as provided by this section cover only the days of holding court under the assignment.

2. Section 2253 of the General Code does not authorize per diem for any days other than days of assignment for a judge holding court pursuant to Section 1469 of the General Code in a county other than his place of residence.

Columbus, Ohio, August 11, 1950

Hon. Thomas F. Dewey, Prosecuting Attorney  
Sandusky County, Fremont, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Assuming that it is necessary for a Common Pleas Judge to leave his place of residence on the day preceding his assignment by virtue of G. C. 1469,

“1. Does 2253 G. C. authorize the payment of expenses for that day?

“2. Does it authorize the payment of per diem for that day?”

Section 2253 of the General Code provides for compensation and expenses of judges holding court outside their county of residence. This section reads as follows:

“In addition to the annual salary and expenses provided for in sections 1529, 2251, 2252, 2252-1, each judge of the court of common pleas while holding court in a county in which he does not reside, by assignment of the chief justice under section 1687 of the General Code, or without any assignment, shall receive his actual and necessary expenses incurred while so holding court in a county in which he does not reside, to be paid from the treasury of such county upon the warrant of the county auditor, issued to such judge; each judge of the court of common pleas who is assigned by the chief justice by virtue of section 1469 of the General Code, to aid in disposing of business of some county other than that in which he resides shall receive twenty dollars per day for each day of such assignment and the sum of not more than ten dollars per day for his actual and necessary expenses incurred in holding court under such assignment, together with his actual transportation expenses, to be paid from the treasury of the county to which he is so assigned upon the warrant of the auditor of such county.”

Your first inquiry regards expenses to be paid if a judge leaves his place of residence on the day preceding his assignment. In answering this inquiry, we must look to the wording of the statute. Regarding expenses the statute reads “each judge of the court of common pleas while holding court in a county in which he does not reside \* \* \* shall receive his actual and necessary expenses incurred while so holding court in a county in which he does not reside \* \* \*.”

It seems clear that the words “while holding court” limits expenses to those incurred on days when the judge is actually holding court. His transportation expenses are provided for in the same section, and it can be inferred from that fact that had the legislature intended that other expenses should be provided for traveling days, it would have so specified.

Your second inquiry regards per diem for a judge who finds it necessary to leave his place of residence on the day preceding his assignment to another county. Section 2253 specifically provides that such judge shall receive “twenty dollars per day for each day of such assignment and the sum of not more than ten dollars for his actual and necessary expenses incurred in holding court under such assignment, together with his actual transportation expenses, \* \* \*.” It appears to be clear from this language that per diem is only allowed for the days of actual assignment. The section provides for traveling expense and necessary incidental expenses but no provision is made for per diem for other than days of assignment. It must be borne in mind that on the day the judge travels, he is still

being paid by his own county for a day's work, and the traveling expenses are paid by the county to which he is assigned.

Therefore, it is my opinion, in answer to your first inquiry, that Section 2253 of the General Code does not authorize the payment of expenses, other than transportation expenses, for a judge who finds it necessary to leave his place of residence on the day preceding his assignment to another county. Expenses as provided by this section cover only the days of holding court under the assignment.

It is also my opinion, regarding your second inquiry, that Section 2253 of the General Code does not authorize per diem for any days other than days of assignment for any judge holding court, pursuant to Section 1469 of the General Code, in a county other than his place of residence.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.