

From the foregoing it seems to have been the apparent intention of the Legislature to confine the power of county commissioners to the original levy of assessments. Where the owner of the assessed property has received notice and participated in the hearing, he may appeal by virtue of Section 6467 (formerly Section 6474). Where he claims lack of notice or other irregularity in the proceedings to assess, he may apply to the Common Pleas Court for the remedies provided in Sections 6503 and 6504, *supra*. Similar provisions exist for inquiry by the Common Pleas Courts into the reasonableness of road improvement assessments in Sections 12078-2 and 1231-6, General Code.

Answering your question specifically, I am of the opinion that the county commissioners are not authorized to compromise and settle the assessment concerning which you inquire for the sum of \$320.00. It will be the duty of the county treasurer to enforce collection in a manner prescribed by law unless suit is brought to enjoin such action by the owner of the property assessed.

Respectfully,

EDWARD C. TURNER,

Attorney General.

2673.

CORONER—PER ANNUM COMPENSATION IN COUNTIES OF UNDER
400,000 POPULATION.

SYLLABUS:

The coroner of a county having a population of less than four hundred thousand, according to the last federal census, who was in office on August 1, 1927, the effective date of House Bill No. 485 (87th General Assembly, 112 v. 204, 205) amending Sections 2856-5a and 2866-1, General Code, is entitled to the difference between the fees earned by such coroner and the minimum compensation of \$150.00 per annum prescribed by Section 2866-1 as amended.

COLUMBUS, OHIO, October 5, 1928.

HON. HARRY K. FORSYTH, *Prosecuting Attorney, Sidney, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of September 26, 1928, requesting my opinion, which letter reads as follows:

“Would the Coroner of Shelby County, said County having a population less than 400,000 according to the last Federal census, who was in office August 1, 1927, the effective date of House Bill No. 485 enacted by the last Legislature, be entitled to the difference between the earned fees and the minimum fee of \$150.00 provided in said Bill, in case the earned fees for the period dating from the first Monday in September, 1927, to the first Monday in September, 1928, were less than the minimum fee provided by said Bill?

I note by the Advance Opinions of the Attorney General, *viz.*, Opinion No. 1057, that certain questions relating to the rights and duties of Coroners under House Bill No. 485 have been dealt with by you. If the specific question I ask is covered by said Opinion, kindly mail me a copy of same.”

The question presented by you was answered by this office in Opinion No. 1057, rendered under date of September 26, 1927, to the Bureau of Inspection and Supervision of Public Offices, Opinions, Attorney General, 1927, Volume III, Page 1856. The second and fourth branches of the syllabus of this opinion read as follows:

"2. The year referred to in Section 2856-5a, General Code, being the year next preceding the first Monday of September of each Calendar year, is not the period of time for which the maximum and minimum compensation allowed to coroners in counties of less than 400,000 population should be computed.

* * *

4. Coroners in office at the time of the effective date of House Bill No. 485, to-wit, on August 1, 1927, are subject to the provisions of said act."

In the opinion, after quoting Sections 2856-5a and 2866-1, General Code, as amended by the 87th General Assembly (112 v. 204, 205) which sections read:

Section 2856-5a. "In all counties having a population, according to the last Federal census, of less than four hundred thousand the coroner of each such county shall report to the county commissioners on the first Monday of September of each year a certified statement of the amount of fees collected by him, under all sections of the General Code, during year next preceding the time of making such statement, naming the party or parties to each case."

Section 2866-1. "In counties having a population, according to the last Federal census, of less than four hundred thousand the total compensation paid to the coroner as fees, under all sections of the General Code, in no case shall exceed five thousand dollars per annum or be less than one hundred and fifty dollars per annum. If the fees in any one year are less than the minimum compensation allowed by law then such coroner shall be allowed the difference up to one hundred and fifty dollars to be paid by the county commissioners out of the emergency or contingent fund."

it was said as follows:

"No change is made affecting the amount of compensation to be paid to coroners in counties having a population of less than 400,000 other than that the total amount which such coroners are permitted to receive shall not be more than \$5,000, nor less than \$150 per year. If the total amount of fees earned by a coroner in counties having a population of less than 400,000 is less than \$150, he shall be paid a sufficient amount from the emergency or contingent fund of the county to make up the difference, up to \$150. No provision is made for the payment into the county treasury of fees collected by coroners in counties with a population of less than 400,000. It may well be implied, however, that if he should receive fees in excess of \$5,000 in any one year, he would be required to account for the excess."

As a matter of fact, the fees which a coroner receives, other than those received when he performs the duties of sheriff, are paid to him from the county treasury as allowed to him upon his return of the performance of inquests and autopsies. Each inquest or autopsy requires a separate return on the back of which is a statement of the fees earned in connection with the same and in practice a voucher is drawn by the county auditor, after the county commissioners pass on the correctness of the items of fees as shown by the return, for each separate return or after an accumulation of several such returns as they see fit, and the coroner is paid the amount of the voucher."

Consideration was then given in the opinion to Section 20 of Article II of the Constitution of Ohio, which provides:

"The General Assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished."

the opinion continuing as follows:

"Article II, Section 20 of the Constitution of Ohio, to the effect that no change in compensation shall affect the salary of any officer during his existing term does not prevent coroners now in office from becoming amenable to the provisions of House Bill No. 485 for the reason that coroners were not paid a salary before the enactment of this law, but were compensated by fees earned.

In the case of *Gobrecht vs. Cincinnati*, 51 O. S. 68, at page 72, Judge Spear, after quoting Article II, Section 20 of the Constitution of Ohio said:

"The question, therefore, is, whether or not the pay of a member of the board is "salary" within the meaning of the above section?

We think it is not. A general definition of salary includes compensation. General definitions, do not, however, cover all cases. Salary is compensation, but, under the section quoted, compensation is not, in every instance, salary. The point is emphasized by this court in the case of *Thompson vs. Phillips*, 12 Ohio St. 617, where it is said that "it is manifest from the change of expression in the two clauses of the section that the word 'salary' was not used in a general sense, embracing any compensation fixed for an officer, but in its limited sense, of an annual or periodical payment for services—a payment dependent on the time and not on the amount of the service rendered." And it was there held that a percentage compensation allowed by law to a public treasurer for official duties, could be altered during his term. It is the "salary" which shall not be changed during the term, not necessarily the compensation.

We think the compensation in the case at bar comes within the principle of the case cited, although a per diem compensation. It is not, within the meaning of the section quoted, "salary." Hence, an increase in the pay of a member during his term, is not prohibited by the constitution.'

In the case of *Theobald vs. State*, 10 O. C. C. (N. S.) 175, it was held that a change from the fee system to salary was not a violation of Article II, Section 20 of the Constitution of Ohio, citing as authority therefor the case of *Gobrecht vs. Cincinnati*, supra, and the case of *Thompson vs. Phillips*, 12 O. S. 617.

* * *

House Bill No. 485, supra, became effective August 1, 1927. The salaries and compensation of coroners then in office for the period following August 1, 1927, should be computed and allowed and paid on the basis of the ratio the time from August 1, 1927, to the first Monday in January, 1928, bears to a calendar year.'

In view of the foregoing, and in specific answer to your question, it is my opinion that the coroner of a county having a population less than four hundred thousand according to the last federal census, who was in office on August 1, 1927, the effective

date of House Bill No. 485 (87th General Assembly, 112 v. 204, 205) amending sections 2856-5a and 2866-1, General Code, is entitled to the difference between the fees earned by such coroner and the minimum compensation of \$150.00 per annum prescribed by Section 2866-1 as amended.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2674.

TRANSPORTATION OF PUPILS—BOARD OF EDUCATION MAY EMPLOY
TEACHER TO TRANSPORT PUPILS.

SYLLABUS:

A teacher in the public schools may enter into a contract with the board of education to transport pupils to the schools, provided the board of education determines that it is physically possible for such teacher satisfactorily to perform such duties.

COLUMBUS, OHIO, October 5, 1928.

HON. H. E. CULBERTSON, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of recent date requesting my opinion, which letter reads as follows:

“Has a teacher any right to take a contract to transport pupils to the school at the same time she is teaching?”

The question presented by you was passed upon by this office in Opinion No. 1842, rendered under date of March 13, 1928, to the Honorable Deane M. Richmond, Prosecuting Attorney, London, Ohio, the first branch of the syllabus of this opinion reading, in part, as follows:

“Teachers in the public schools may be employed to transport pupils to or from school; such teachers may also enter into a contract with the board of education for such purpose; * * *”

In the opinion the following language is used:

“There is no reason why a board of education, if it sees fit so to do, may not employ the same person to transport pupils either by contract or as an employe for that purpose, and to teach in the schools. There is nothing incompatible in the duties which said teacher would have to perform, and whether or not it is physically possible for the same person to satisfactorily perform both duties is a matter for the board of education to determine.”

I am enclosing a copy of this opinion.

In view of the foregoing and in specific answer to your question, it is my opinion that a teacher in the public schools may enter into a contract with the board of edu-