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CORONERS—COUNTY—MAY BE REIMBURSED FOR NECESSARY TRAVELING EXPENSES—INCURRED IN USE OF PERSONALLY OWNED AUTOMOBILES ON OFFICIAL BUSINESS—OPINION 2187, O.A.G. 1950, PAGE 571, OVERRULED.

SYLLABUS:

County coroners may be reimbursed for their necessary traveling expenses incurred by them while using their personally owned automobiles on their official business. Opinion No. 2187, 1950, O. A. G., page 571, overruled.

Columbus, Ohio, September 23, 1952

Hon. Joel S. Rhinefort, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir :

This will acknowledge receipt of your request for my opinion, which reads as follows :

“The Coroner of Lucas county, Ohio has advised me that he has received a report from the State Auditor disallowing mileage in the conduct of his office for the years 1948, 1949, and up to September 1, 1950, in the sum of \$1,319.07, which is an average of a little over \$400.00 a year. Said mileage was paid to the coroner monthly at the rate of six cents per mile.

“The inclusion of said mileage did not exceed the yearly budget allowed the coroner for expenses incurred in the operation of said office for any one year.

“It is necessary for the coroner to use his own automobile in Lucas county. No automobile is furnished by the county commissioners as occurs in Cuyahoga, Hamilton, Franklin and some other counties. At no time has the salary and expenses of the present coroner equalled or exceeded the salary and expenses of his predecessors in office. The present coroner was appointed April 9, 1947 to fill an unexpired term and was thereafter elected to the office.

“I would appreciate an opinion as to whether or not such mileage can be allowed by the county commissioners.”

Prior to the enactment, on June 28, 1945, of Amended Substitute Senate Bill No. 92, by the 96th General Assembly (121 Ohio Laws, 591), the compensation of coroners in counties, having a population of less than 400,000, was entirely based on certain fees. Section 2866, General Code, as it was then in force, read as follows :

“Coroners shall be allowed the following fees: For view of dead body, three dollars; for drawing all necessary writings, for every one hundred words, ten cents; for traveling each mile, ten cents; when performing the duties of sheriff, the same fees as are allowed to sheriffs for similar services.”

Section 2866-1, General Code, then in force provided as follows :

“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."

This general schedule of fees did not apply to counties having a population according to the last federal census, of 400,000 or more, where by the terms of Section 2856-4, General Code, a coroner was entitled to receive a salary of \$6,000 per annum.

The Act of June 28, 1945, above referred to, appealed all of the sections above mentioned and by the enactment of Section 2855-3, General Code, substituted the following:

"The annual salary of the coroner shall be four hundred dollars in counties of less than 25,000, as ascertained by the latest federal census of the United States. The coroner shall receive additional compensation as follows; one and one-half cents ($1\frac{1}{2}\phi$) per capita for the population of such county in excess of 25,000 and not in excess of 200,000; and one cent (1ϕ) per capita for the population of such county in excess of 200,000. Such annual compensation shall not be more than six thousand dollars, payable monthly by the county treasurer of such county on the warrant of the county auditor."

It therefore appears very clearly that prior to June 28, 1945, coroners, at least in counties having a population of less than 400,000, were strictly on a fee basis so far as their compensation was concerned. It will be noted, too, that all the elements that entered into the coroner's compensation are denominated as "fees." The coroner was entitled to a fee of \$3.00 for viewing a dead body; a fee of 10ϕ per hundred words for all necessary writings, and a fee of 10ϕ for traveling each mile in the performance of his duties. It would appear that since the coroner was only allowed a sum of \$3.00 for viewing a dead body and 10ϕ per hundred words for writing his record and report, a large portion of his compensation, if it amounted to any sizeable sum, must have grown out of the allowance of 10ϕ for each mile traveled. Whether the legislature in establishing that schedule and in making that allowance for "traveling each mile," had in mind that it was partly to pay the expenses of his travel, it is impossible to say. Certain it is that this amount was styled a "fee," and was not denominated as an allowance for expenses.

Just before the Act of June 28, 1945 was to become effective, Opinion No. 426, Opinions of the Attorney General for 1945, page 535, was rendered, the syllabus reading as follows:

“County commissioners may permit the county coroner to use, in the discharge of his official duties, a motor vehicle purchased by them for their own use under Sections 2412-1 and 2412-2, General Code, and also supply gasoline and oil therefor.”

In the course of the opinion, the repeal of former Section 2866 and the enactment of the new Section 2855-3 were referred to, and the following language was used:

“As a result of this revision county coroners will receive no mileage *or other fees* for official services, but instead will receive salaries and per capita compensation from the county treasury based upon the population of their respective counties, pursuant to the provisions of new Section 2855-3, General Code.”

(Emphasis added.)

My immediate predecessor, in Opinion No. 2187, Opinions of the Attorney General for 1950, page 571, held:

“County coroners who use their own automobiles in discharging the duties of their office are not entitled to mileage for such use either by statute or by implication. Their compensation is limited to that provided for them in Section 2855-3 of the General Code.”

It was doubtless on the strength of that opinion that the findings mentioned in your letter were made.

It appears to me that the use of the word “compensation” in the above syllabus is not accurate. It implies that an allowance for reimbursement of expenses of traveling is a part of the compensation of an officer. I submit that an officer could not live long on that kind of “compensation.” The opinion is predicated upon the fact that former Section 2866 above referred to, which carried a fee of 10¢ for traveling each mile was repealed in connection with the enactment of Section 2866-3, General Code.

The writer of the 1950 opinion apparently based his entire conclusion on the 1945 opinion which, as will be noted in its holding, in no way sustained his conclusion. The writer of the 1950 opinion also quoted the sentence from the body of the 1945 opinion which I have above set out,

to the effect that "as a result of this revision, county coroners will receive no mileage *or other fees* for official services," etc. and then declared:

"In view of this opinion, and the discussion preceding it, it is apparent that the legislature intended the provision for per capita compensation of Section 2855-3, *supra*, to be in lieu of mileage and other fees formerly allowed to coroners, and that county coroners are not now entitled, as a matter of right by statute, to mileage or any other compensation other than that provided for in Section 2855-3, General Code."

That of course begs the question, for we are not concerned with the right of a coroner to receive "additional compensation," but only with the question whether he may be reimbursed for traveling expenses incurred in the performance of his official duties.

In an opinion which I rendered on August 28, 1951, being No. 690, it was held:

"County officers and employees may be reimbursed for necessary travel expenses incurred by them while using their personally owned automobiles on official county business, and in such cases, the method adopted for payment of such expenses is discretionary with the county officials having final authority in such regard."

While that opinion did not refer specifically to county coroners, yet, since a county coroner is one of the elected officers of the county, it applies just as directly to the coroner as to any other county officer.

We may note the provisions of Section 2412-1, General Code, authorizing county commissioners to purchase automobiles for their own use, and also Section 2412-2, General Code, which provides in part:

"When purchased, such vehicle or vehicles shall be for the use of the county commissioners, *or other county officials*, * * * Such vehicles shall be used by each such official * * * in lieu of hiring vehicles * * *." (Emphasis added.)

In view of this broad authority, it appears to me that the law intends to give the county commissioners wide discretion in providing the county officers with means of transportation while performing their official duties, and if they may either purchase or rent automobiles for that purpose, it seems quite reasonable that they may reimburse an official for the expense involved in the use of a vehicle owned by him.

I call particular attention to an earlier opinion referred to in my Opinion No. 690, to wit, Opinion No. 170, Opinions of the Attorney General for 1930, page 1241, and particularly to the second syllabus of that opinion, which reads as follows:

“In the absence of statutory or charter provision prohibiting or limiting such action, a public officer or public employe may lawfully be reimbursed from public funds for traveling and other personal expenses actually and necessarily incurred by him in the performance of a public duty in furtherance of a definite project or undertaking then under way or in immediate prospective contemplation, provided in the exercise of a sound and proper discretion, it appears that the incurring of said expenses is necessary for the benefit of the political subdivision which the officer or employe serves, and in the performance of a duty enjoined or authorized by law. If by statute or charter provision such expenses are limited the officer or employe may be reimbursed within the limitations allowed by such law only.”

The then Attorney General stated that that proposition had been sustained by a large number of previous opinions.

I see no reason why the views expressed in both of the opinions last referred to will not apply just as well to a coroner as to any other county officer, and I therefore feel impelled to overrule the 1950 opinion above referred to, in so far as it forbids the allowance to a county coroner for the expense of driving his own automobile in the performance of his official duties.

It is accordingly my opinion and you are advised that county coroners may be reimbursed for their necessary traveling expenses incurred by them while using their personally owned automobiles on their official business. Opinion No. 2187, of 1950, overruled.

Respectfully,

C. WILLIAM O'NEILL
Attorney General