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1. DIVORCE—ALIMONY—PETITION FILED IN COURT OF COMMON PLEAS—COURT MAY, AND IN CASES WHERE CHILDREN UNDER FOURTEEN YEARS OF AGE ARE INVOLVED, SHALL CAUSE AN INVESTIGATION TO BE MADE—SECTION 8003-9, G. C.
2. COURT MAY APPOINT AND DESIGNATE ONE OR MORE COURT OFFICERS TO CONDUCT INVESTIGATION—SECTION 1692, G. C.—PAYMENT PROVIDED BY SECTION 1693, G. C.
3. WHEN COURT MAY APPOINT ONE OR MORE INVESTIGATORS OR APPOINT INVESTIGATORS FROM TIME TO TIME.
4. NO STATUTORY AUTHORITY TO TAX AND CHARGE COSTS FOR SERVICES OF INVESTIGATOR APPOINTED AS OUTLINED IN BRANCHES 2 AND 3 OF SYLLABUS.

SYLLABUS:

1. When a petition for divorce or for alimony is filed in a court of common pleas, such court may, and in cases where there are children under fourteen years of age involved, shall cause an investigation to be made pursuant to Section 8003-9, General Code.

2. In causing this investigation to be made, such court of common pleas may appoint and designate one or more court officers, in accordance with Section 1692, General Code, to conduct the investigation. An officer or officers so appointed shall be paid as provided in Section 1693, General Code.

3. By virtue of the duties imposed by Section 8003-9, General Code, a court, having the inherent power to do those things necessary for the performance of its business, may also appoint one or more investigators, or appoint investigators from time to time, to be paid however, only upon the allowance of the county commissioners as provided by Section 2460, General Code.

4. Costs cannot be taxed and charged for the services of an investigator, appointed in accordance with branches 2 and 3 above, because there is no statutory authority so to do.

Columbus, Ohio, November 9, 1951

Hon. Ray Bradford, Prosecuting Attorney
Clermont County, Batavia, Ohio

Dear Sir:

I am in receipt of your recent request for my opinion which is quoted as follows:

“The Common Pleas Court of Clermont County has asked me to get an opinion from you concerning the following:

‘Under the new law to become effective August 28, 1951, in cases pending before a trial court, the trial judge is required to investigate character, family relations, past conduct, etc., of all litigants in divorce proceedings where there are children under 14 years of age.

‘Our Court would like to have an opinion as to how he is to appoint investigators for such above mentioned matters and how much such investigators are to be paid.’

“The answer to these questions by you will be greatly appreciated. Thank you for your anticipated cooperation.”

The new law to which you refer is Section 8003-9, General Code, which provides:

“On the filing of a petition for divorce or for alimony, the court may and in cases where there are children under fourteen years of age involved, shall, cause an investigation to be made as to the character, family relations, past conduct, earning ability, and financial worth of the parties to the action. The report of such investigation shall be made available to either party or his counsel of record upon written request not less than five days before trial.

“The court, on its own motion, may cite either party to the action from any point in the state to appear in court and testify as a witness.”

It will be noted that this section of the General Code makes it mandatory for a common pleas court to cause an investigation to be made in divorce cases where children are involved under fourteen years of age.

Your request asks how the court is to appoint investigators to conduct the investigation referred to in the above cited statute and how such investigators are to be paid.

A court of common pleas may, of course, in the exercise of its sound discretion, designate any person to carry on this investigation so long as such person serves without compensation. If, however, a court of common pleas desires to designate paid court officers to conduct this investigation, it must do so in accordance with the Ohio General Code.

Your attention is called to Section 1692, General Code, which gives to a court of common pleas the power to appoint one or more constables, and is quoted as follows :

“When, in the opinion of the court, the business thereof so requires, each court of common pleas, court of appeals, superior court, insolvency court, in each county of the state, and, in counties having at the last or any future federal census more than seventy thousand inhabitants, the probate court may appoint one or more constables to preserve order, attend the assignment of cases in counties where more than two common pleas judges regularly hold court at the same time, and discharge such other duties as the court requires. When so directed by the court, each constable shall have the same powers as sheriffs to call and impanel jurors, except in capital cases.”

It is apparent from reading Section 1692, quoted supra, that a court of common pleas may appoint one or more constables to conduct the investigation referred to in Section 8003-9, General Code. The reason for this determination is found in the general catch-all provision of Section 1692, supra, which permits the court to designate any one or more of its constables to “discharge such other duties as the court requires.” The limitation on the court in its appointment of one or more constables for this and other proper purposes is found in the language of that statute, Section 1692, General Code, to the effect that such appointments may be

made only "when, in the opinion of the court, the business thereof so requires."

Compensation is provided for constables, appointed under Section 1692, General Code, in Section 1693, General Code, which is quoted as follows:

"Each constable shall receive the compensation fixed by the judge or judges of the court making the appointment. In counties where four or more judges regularly hold court, said compensation shall not exceed four thousand dollars each year, in counties where two judges and not more than three judges hold court at the same time, not to exceed twenty-five hundred dollars each year, and in counties where only one judge holds court, such amount, not to exceed eighteen hundred dollars each year, as may be fixed by the court, and shall be paid monthly from the county treasury on the order of the court. For counties where two or more judges hold court as herein provided, such court constable or constables when placed by the court in charge of the assignment of cases, or of any duties other than or in addition to preserving order, may be allowed further compensation not to exceed nineteen hundred dollars per year, as the court by its order entered on the journal determines. In counties where only one judge holds court the constable provided for herein, when not attending the common pleas court, shall upon the order of the judge of such common pleas court, and without additional compensation, attend the probate court and the court of appeals of said county."

Your attention is directed to the case of *The State, ex rel. Justice v. Thomas*, Aud., 35 Ohio App. 250, which interpreted former Section 1693, General Code. The present Section 1693, General Code amended the former Section 1693, General Code, by changing the amounts of compensation and therefore would not change the above court's interpretation. The first branch of the syllabus of that case is quoted as follows:

"The Budget Act, Sections 5625-1 to 5625-39, General Code (112 Ohio Laws, 391, 113 Ohio Laws, 670), does not authorize the county commissioners to fix the amount of the salary of the criminal court bailiff and court constable of the common pleas court. That power is granted to the judge of said court under Sections 1541, 1692, and 1693, General Code."

I am in complete accord with this syllabus, and feel that it properly sets forth the law with respect to the compensation of constables appointed by a court of common pleas under Section 1692, General Code.

The foregoing discussion deals with the power of a court of common pleas to provide for one or more paid investigators without the approval of the county commissioners. If a court of common pleas desires to appoint one or more investigators who shall be paid in a manner different from the formula set forth in Section 1693, General Code, it may do so by virtue of a court's inherent power to do those things necessary for the performance of its business, so long as such number of investigators are paid upon the allowance of the county commissioners in accordance with Section 2460, General Code, which provides :

“No claims against the county shall be paid otherwise than upon the allowance of the county commissioners, upon the warrant of the county auditor, except in those cases in which the amount due is fixed by law, or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the county auditor, upon the proper certificate of the person or tribunal allowing the claim. No public money shall be disbursed by the county commissioners, or any of them, but shall be disbursed by the county treasurer, upon the warrant of the county auditor, specifying the name of the party entitled thereto, on what account, and upon whose allowance, if not fixed by law.”

This method of paying investigators may be more desirable to some of the courts and counties in that an investigator could be paid a specific fee for each investigation. The use of such a plan, it is submitted, might be more economical to some of the counties than the fixed salary method of payment provided in Section 1693, *supra*.

Thus far this opinion has pointed out that the investigators, discussed herein, are to be paid from the county treasury. This leads to the following question: Is the burden of supplying the treasury with funds for that purpose upon the taxpayer or upon one of the litigants to a divorce proceeding? As a general proposition, any sum of money paid from the county treasury for personal services of a county officer must come from the taxpaying public unless there is some statute which provides that the service rendered shall be compensated by court costs. Authority for the rule that court costs may be charged and collected for particular services only when there is a statute which so provides is found in the case of *City of Euclid, Appellant v. Vogelín, et al., Appellees*, 152 Ohio St., 538. The pertinent portion of the syllabus in that opinion is quoted as follows :

“2. Costs are allowed only by authority of statute.”

Since there is no statute in the Ohio General Code which provides that court costs may be taxed and charged for the services performed by such an investigator, it necessarily follows that the money for such services must be paid from county funds.

In specific answer to your question, it is my opinion and you are accordingly advised that :

1. When a petition for divorce or for alimony is filed in a court of common pleas, such court may, and in cases where there are children under fourteen years of age involved shall, cause an investigation to be made pursuant to Section 8003-9, General Code.

2. In causing this investigation to be made, such court of common pleas may appoint and designate one or more court officers, in accordance with Section 1692, General Code, to conduct the investigation. An officer or officers so appointed shall be paid as provided in Section 1693, General Code.

3. By virtue of the duties imposed by Section 8003-9, General Code, a court, having the inherent power to do those things necessary for the performance of its business, may also appoint one or more such investigators, or appoint investigators from time to time, to be paid however, only upon the allowance of the county commissioners as provided by Section 2460, General Code.

4. Costs cannot be taxed and charged for the services of an investigator, appointed in accordance with branches 2 and 3 above, because there is no statutory authority so to do.

Respectfully,

C. WILLIAM O'NEILL
Attorney General