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JUDGE, COURT OF APPEALS—ASSIGNED BY CHIEF JUSTICE OF COURT OF APEALS—TO DISTRICT OTHER THAN WHERE ELECTED—AIDING IN BUSINESS OF SUCH OTHER DISTRICT—WITHIN SCOPE OF ASSIGNMENT—WHENEVER ENGAGED IN EXAMINATION AND DECISION OF CASES HEARD, WHETHER OR NOT DUTIES PERFORMED WITHIN GEOGRAPHICAL LIMITS OF DISTRICT OF ASSIGNMENT—ENTITLED TO RECEIVE TWENTY DOLLARS PER DAY FOR EACH DAY OF ASSIGNMENT—OPINION 1024, OAG 1951, PAGE 872 APPROVED AND FOLLOWED—SECTIONS 141.10 RC 2253-3 GC, 2501.14 RC, 1528 GC.

SYLLABUS:

A judge of a Court of Appeals, assigned by the chief justice of the Court of Appeals by virtue of Section 2501.14, Revised Code, Section 1528, General Code, to a district other than that to which he was elected, is aiding in the business of such other district, within the scope of such assignment, whenever he is engaged in the examination and decision of cases heard by him by virtue of such assignment, whether or not such be performed within the geographical limits of the district of assignment and, thus, is entitled, pursuant to Section 141.10, Revised Code, Section 2253-3, General Code, to receive twenty dollars per day for each day of such assignment. Opinion No. 1024, Opinions of the Attorney General for 1951, page 872, approved and followed.

Columbus, Ohio, December 29, 1953

Hon. Frank T. Cullitan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“The judges of the Sixth Appellate District Court of Appeals held court in this district, by designation of the Chief Justice of the Court of Appeals of Ohio, from June 22 to June 27, 1953 inclusive. Pursuant to the provisions of Revised Code 141.10 (G.C. 2253-3), the judges rendered their bills for their per diem compensation from June 22 to June 27 inclusive for \$120.00 for each of the judges. They also rendered bills for the additional sum of \$230.00 each, representing 11½ days actually spent by each in his own county of residence in disposing of the cases in which they sat in hearing in this district.

“The Presiding Judge of this district approved the bill for the services covering the six days during which the judges held court here, and these bills were paid from the treasury of this county upon the warrant of the County Auditor. The Presiding Judge, however, withheld his approval of the bills for the additional 11½ days during which the judges were engaged in studying and deciding the cases submitted to them after they had returned to their own district. The Presiding Judge does not question the accuracy of the time spent but feels constrained to withhold his approval of the bills for services for the additional time spent outside this county, in the absence of some authoritative ruling.

“The Judges of the Sixth District rely upon your Opinion No. 1024, dated December 27, 1951, in the fourth syllabus of which you held that the judges of the Common Pleas Court were entitled to receive their per diem compensation of \$20.00 while engaged in the judicial business of a county other than that in which they reside, whether or not such services are performed within the geographical limits of such other county. The judges feel that your above-cited opinion has equal application to judges of the Court of Appeals.

“Inasmuch as the question is of statewide interest, I respectfully request your opinion as to whether a Court of Appeals judge, assigned by the Chief Justice of the Court of Appeals of Ohio to sit in a district other than that in which he resides, may receive the per diem compensation of \$20.00 pursuant to R. C.

141.10 for days spent in his own district in disposing of the cases in which he sat in hearing in such other district.”

As noted in your letter, I have had occasion to pass on this same question as to judges of Common Pleas Courts in Opinion No. 1024, Opinions of the Attorney General for 1951, page 872. The fourth paragraph of the syllabus of such opinion reads:

“A common pleas judge, assigned by the Chief Justice by virtue of Section 1469, General Code, to aid in disposing of the business of some county other than that in which he resides is aiding in disposing of the business of such other county on all days when, pursuant to such assignment, he is engaged in the judicial business of such other county, whether or not such be performed within the geographical limits of such other county, and, thus, is entitled, pursuant to Section 2253, General Code, to receive \$20.00 for each day of such assignment.”

I quote from such opinion at page 879:

“Your second question is whether a judge assigned to a county in which he does not reside, pursuant to Section 1469, General Code, may receive the per diem amount of \$20.00 per day for days physically spent in his own county of residence in arriving at his conclusions and preparing his decisions and opinions. I understand that, based on the 1950 opinion of my predecessor, your office has taken the position that the per diem payment of \$20.00 cannot be paid for such days of service. From an examination of this 1950 opinion, however, I do not find that such question was considered by the then Attorney General.

“An examination of Section 1469, General Code, reveals that the Chief Justice is authorized to ‘assign a judge or judges from another county or counties in the state to aid in the disposition of such business.’ Likewise, it will be noted that Section 2253 used the words, ‘to aid in the disposition of such business’ and provides for the payment of ‘twenty dollars per day for each day of such assignment.’

“The answer to your question appears to lie in the determination as to whether such judge is still on ‘assignment’ and is aiding ‘in disposing of business of some county other than that in which he resides.’

“No one can deny that research, study and preparation of opinions and decisions by such judge in or out of his home county on matters submitted to him as a judge of the court of common pleas in a county in which he does not reside and to which he has been assigned is an aid in the disposition of such other county’s business. The clear meaning of the statutory provision is that such assigned judge is to be paid for judicial services rendered for such other county. I find nothing in the statute providing that

such services must be rendered within the geographical confines of the county of assignment. Aside from personal reasons, there may well be official reasons for a judge to follow this course. He may have a better research library in his home county or at least one with which he is more familiar, thus expediting his work. By remaining in his home county he may desire to lessen the expenses of transportation, meals and lodging which would otherwise have to be paid by the county of assignment."

The language of Section 2253, General Code, being considered in the 1951 opinion was:

"* * * 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 * * *."

The question you present is whether the reasoning which I adopted in the 1951 opinion is applicable to a similar situation involving temporary assignments of judges of the Court of Appeals to another district. More specifically, it involves a consideration of whether the language of the statute authorizing the payment of \$20.00 per day to such judges of the Court of Appeals is distinguishable from the language of the statute authorizing such payment to judges of the Court of Common Pleas:

Section 2501.03, Revised Code, Section 1518, General Code, provides for the annual selection of the chief justice of the Court of Appeals by the judges of such courts. Section 2501.14, Revised Code, Section 1528, General Code, authorizes the chief justice of the Court of Appeals to assign a judge of such court to another district upon request of the presiding judge of such district. Section 2501.15, Section 1529, General Code, reads:

"A judge assigned under section 2501.14 of the Revised Code shall be paid his actual expenses for each day he performs judicial duties, including the time necessarily devoted to going to, and returning from, such assignment, and to the examination and decision of cases heard by him while he is engaged outside the district for which he was elected. Such expenses shall be paid from the state treasury upon the warrant of the auditor of state, issued upon the certificate of the chief justice of the court of appeals, or the judge making the assignment."

Here, of course, in language much more explicit than that which I had under consideration in the 1951 opinion, is a clear recognition that

the performance of all judicial duties, including the examination and decisions of cases heard, are duties performed within the scope of the assignment, and a recognition that such assignment is not limited to holding court in the sense of time devoted only to formal proceedings therein. It, thus, is clear that had the judges of the Sixth Appellate District remained within the geographical limits of the Eighth Appellate District during the 11½ days spent in disposing of the cases in question, they would have been entitled to their "actual expenses," including food and lodging for such 11½ days. By returning to their home district and thus terminating the incurring of "actual expenses," did they forego their right to per diem payment for such 11½ days? I believe not. The right of such judges to per diem payment is governed by the language of Section 141.10, Revised Code, Section 2253-3, General Code, which, in pertinent part, reads as follows:

"* * * each judge of the court of appeals who is assigned by the chief justice of the supreme court by virtue of section 2501.14 of the Revised Code, to aid in disposing of business of some district other than that in which he is elected or appointed, shall receive twenty dollars per day for each day of such assignment, to be paid from the treasury of the county to which he is so assigned upon the warrant of the county auditor of such county."

Parenthetically, it might be stated that the reference to assignment by the chief justice of the *Supreme Court* in Section 141.10 obviously is a legislative inadvertence since by virtue of Section 2501.14 such assignment is by the chief justice of the Court of Appeals and not by the chief justice of the Supreme Court. The words "of the Supreme Court" were not contained in Section 2253-3, General Code, but were added at the time such section was recodified as Section 141.10, Revised Code.

The key language here under consideration is identical to that of Section 2253, General Code, now Section 141.07, Revised Code, under consideration in the 1951 opinion. Both read "shall receive twenty dollars per day for each day of such assignment." Each provides for such assignment "to aid in disposing of business of some district (county) other than that in which he resides, (is elected or appointed)." Clearly, the judges of the Sixth Appellate District could have remained in the Eighth Appellate District for the 11½ days devoted to the examination and decision of the cases submitted and, in addition to their "actual expenses"

authorized by Section 2501.15, also received \$20.00 per day. During such time there would have been no question as to the fact that their "assignment" had not terminated and that they were aiding in disposing of the business of the Eighth Appellate District.

I believe it clear, for the same reason stated in my 1951 opinion, that by returning to their home district and devoting there 11½ days to the examination and decision of such cases, the judges in question did not terminate such assignment and, thus, are entitled to payment therefor at the rate of "twenty dollars per day for each day of such assignment" for such 11½ days devoted to aiding in disposing of the business of the district of assignment.

In specific answer to your question, it is my opinion that a judge of a Court of Appeals, assigned by the chief justice of the Court of Appeals by virtue of Section 2501.14, Revised Code, Section 1528, General Code, to a district other than that to which he was elected, is aiding in the business of such other district, within the scope of such assignment, whenever he is engaged in the examination and decision of cases heard by him by virtue of such assignment, whether or not such be performed within the geographical limits of the district of assignment and, thus, is entitled, pursuant to Section 141.10, Revised Code, Section 2253-3, General Code, to receive twenty dollars per day for each day of such assignment. Opinion No. 1024, Opinions of the Attorney General for 1951, page 872, approved and followed.

Respectfully,

C. WILLIAM O'NEILL
Attorney General