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FEE TO CORONER—FEE OF TEN CENTS FOR TRAVELING EACH MILE, ALLOWED TO CORONER BY FORMER SECTION 2866, G. C., IS PART OF COMPENSATION ALLOWED BY SUCH SECTION—CORONER IN OFFICE ON EFFECTIVE DATE OF REPEAL OF SECTION, OCTOBER 12, 1945, WOULD HAVE RIGHT TO RECEIVE SUCH FEE AS PART OF COMPENSATION DURING REMAINDER OF TERM OF OFFICE.

SYLLABUS:

The fee of ten cents for traveling each mile allowed to a coroner by former Section 2866, is a part of the compensation allowed a coroner by such section and a coroner who was in office on the effective date of the repeal of said section, to wit, October 12, 1945, would have a right to receive such fee as a part of his compensation during the remainder of his term of office.

Columbus, Ohio, December 17, 1945

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have before me your request for my opinion, reading as follows:

“Since the release of Opinion No. 426, on August 31, 1945, holding that 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, and also supply gasoline and oil therefor, apparently in some counties the county auditor is refusing to pay to the coroner the ten cents per mile for traveling, as provided in Section 2866, General Code, on the grounds that such allowance was for expenses and not a part of the fees or compensation for the coroner.

Will you please advise us whether the ten cents per mile traveling expense is to be considered as part of the compensation allowed to coroners, or whether same should be considered as expenses, and not included as part of the coroner's compensation, to which the present coroners would be entitled, as set forth in your opinion No. 469.”

Prior to the enactment of Senate Bill 92, by the 96th General Assembly, Section 2866, General Code, provided 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.”

In the act aforesaid a change was made by the General Assembly from the fee system to a salary system for coroners, and said Section 2866 was repealed. The question presented to me, which was considered in my opinion No. 469, to which you refer, was whether the change from the fee system to the salary system and the repeal of said Section 2866 would affect the compensation of a coroner who was in office at the effective date of said enactment or whether he would continue during his then existing term to receive the compensation provided by law at the time his term began. My holding, as stated in the syllabus of that opinion, was as follows:

“The provisions of Section 2855-3, General Code, enacted by the 96th General Assembly will not be operative to change the compensation of a coroner who is in office at the effective date of said enactment, and he will continue during his then existing term to receive the compensation provided by the law in force when such term began.”

The question which you now raise is whether under the terms of Section 2866, the fee allowed “for traveling each mile, ten cents” is to be regarded as a part of the coroner’s compensation or whether it should be considered merely as an expense allowance, and whether a coroner in office at the time the new act went into effect is entitled to receive that traveling fee.

It will be observed upon reading Section 2866 supra, that it is stated: “Coroners shall be allowed the *following fees*.” There follow four items which the law designated as “fees” which were to be allowed a coroner:

1. “For view of deal body, three dollars;
2. For drawing the necessary writings, for every one hundred words, ten cents;
3. For traveling each mile, ten cents;
4. When performing the duties as sheriff the same fees as are allowed a sheriff for similar services.”

The item of ten cents for traveling each mile is by the terms of the

statute as clearly designated as one of the fees to which the coroner is entitled as are any of the other items. The whole section was plainly intended to deal with his compensation.

There appears to me to be a perfectly valid reason for allowing the item in question as a fee. Each mile of travel would of necessity take time, and there is nothing unusual or unreasonable about allowing an officer compensation in proportion to the time which he is obliged to devote to his duties. It seems reasonable to conclude that it might take at least as long to travel ten miles as to make a "view of dead body." If the General Assembly had intended to provide that in addition to fees he should be allowed his actual traveling *expenses*, it could easily have said so. Provisions for allowance of expenses are found in a great many of the statutes.

Substantially the same question as that which you raise appears to have been before one of my predecessors as shown by an opinion found in 1928 Opinions Attorney General, page 1117, wherein your Bureau called attention to the provisions of Section 2856-5, General Code, which provided that in counties having a population according to the last federal census of 400,000 or more, the coroner should pay over to the treasurer of such county "all fees to which he shall be entitled under all sections of the General Code forthwith upon receipt of same." The question propounded was:

"Is the ten cents per mile which he is to receive from the county treasury under this section a fee which he is required to pay over to the county treasurer under the provisions of Section 2856-5, G. C., or may the coroner retain this amount to cover his expenses in traveling?"

It was held by the then Attorney General that the ten cents per mile in question, was a part of the fees which the coroner in counties having the population in question, was required to pay over to the county treasurer.

It is accordingly my opinion that the fee of ten cents for traveling each mile allowed to a coroner by former Section 2866 is a part of the compensation allowed a coroner by such section and that a coroner who was in office on the effective date of the repeal of said section, to wit, October 12, 1945, would have a right to receive such fee as a part of his compensation during the remainder of his term of office.

I do not see that my opinion No. 426, to which you refer, has any bearing on the question I am here considering. It held that the county commissioners have authority to permit the coroner to use, in the discharge of his official duties, a motor vehicle purchased by them for their own use, and to supply gasoline and oil therefor. That privilege was not limited either to a coroner serving before or one serving after the change in the law regarding his compensation. I know no reason why each class is not equally privileged to use the county commissioners' car if the commissioners see fit to permit it.

Respectfully,

HUGH S. JENKINS

Attorney General