

2424.

SHERIFF—REQUIRED TO ATTEND UPON COMMON PLEAS COURT IN BOTH CIVIL AND CRIMINAL CASES WHEN.

*SYLLABUS:*

*Where the judge of the court of common pleas has failed to appoint a criminal bailiff or a court constable, as provided in sections 1541 and 1692, General Code, it is the duty of the sheriff, by virtue of section 2833, General Code, to attend upon the common pleas court in both criminal and civil cases.*

COLUMBUS, OHIO, March 28, 1934.

HON. EDWIN S. DIEHL, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads in part as follows:

“\* \* \* I wish to state that the Sheriff of this County has one deputy who serves in the office and handles the office work as well as any other work which may arise. The Sheriff and another deputy take care of all outside matters. When our present Judge of the Court of Common Pleas took office he dispensed with the services of a Court Bailiff which his predecessors had always appointed under authority of Section 1541, General Code.

When cases are tried in the Court of Common Pleas, both criminal and civil, the Court calls upon the office of the Sheriff for someone to act as Bailiff. Many times the Sheriff and his deputies are so occupied that he cannot conveniently render this service to the Court. The question is, since the Court has failed to make any appointment as Bailiff to act in the trial of cases, both civil and criminal, whether he can compel the Sheriff or any of his deputies to assume the duties of Court Bailiff in his Court?”

Section 1530, General Code, provides inter alia that the sheriff shall attend upon the court of appeals when that court is in session in his county.

Section 1541, General Code, referred to in your letter, reads in part as follows:

“The judge of the court of common pleas of a county, or the judges of such court in a county in joint session, if they deem it advisable, may appoint either or all of the following:

\* \* \*

\* \* \*

\* \* \*

A criminal bailiff, who shall be a deputy sheriff and hold his position during the pleasure of the judge or judges of such court. He shall receive compensation to be fixed by such judge or judges at the time of his appointment, not to exceed the amount permitted by law to be allowed court constables in the same court, which shall be paid monthly from the county treasury upon the warrant of the county auditor.”

This section also provides for a chief court constable in counties where

there are four or more judges. However, this is inapplicable to the present situation, since Defiance County has only one common pleas judge.

Section 1543, General Code, reads as follows:

"The criminal bailiff shall act for the sheriff in criminal cases and matters of a criminal nature in the common pleas and probate courts of such county. Under the direction of the sheriff, he shall be present during trials of criminal cases in such courts and during such trials perform all the duties as are performed by the sheriff. The criminal bailiff shall conduct prisoners to and from the jail of such counties, and for that purpose, shall have access to the jail and to the court room, whenever ordered by such courts, and have care and charge of such prisoners when so doing. Under the direction of the sheriff, the criminal bailiff shall convey to the penitentiary all persons sentenced thereto. He shall receive and collect from the state treasurer all costs in such criminal cases in the same manner as the sheriff by law is required to do, and pay the amount so collected to the sheriff of such county."

Section 1692, General Code, relating to court constables, reads 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."

Section 1693, General Code, provides for the salaries of court constables.

Section 2833, General Code, relating to the powers and duties of the sheriff, reads in part as follows:

"Each sheriff shall preserve the public peace \* \* \*. He shall attend upon the common pleas court and the court of appeals during their sessions, and, when required, upon the probate court. \* \* \*"

It is to be noticed that the language of sections 1541 and 1692, General Code, is permissive rather than mandatory. It is likewise significant to note that the positions of criminal bailiff and court constable are compatible. This office in an opinion to be found in Opinions of the Attorney General for 1921, Volume I, page 317, held as disclosed by the syllabus:

"The office and duties of a criminal court bailiff and those of a court constable are compatible, and the same person may be appointed to discharge the duties of both offices, by the judge or judges of the common pleas court in counties having less than four judges, and may receive the salary for both positions, provided, however, that he is not paid twice for the same service."

This opinion was approved in Opinions of the Attorney General for 1927, Volume II, page 1175.

I have quoted the above sections and provisions of law in an attempt to clarify a situation that has caused much confusion. It is the common practice to refer to all such persons as "bailiffs," regardless of the fact that such person may be a criminal bailiff, chief court constable, court constable, or even a deputy sheriff.

Your letter raises a rather unique question. The statement of facts presented by you is not altogether clear, but I assume you have in mind a situation where the judge has neither appointed a criminal bailiff, pursuant to section 1541, General Code, nor a court constable by virtue of section 1692, General Code. The reason why the court has not made such appointments is not evident from your letter, and I express no opinion as to the advisability or inadvisability of making such appointments. As before stated, the language of sections 1541 and 1692, General Code, is permissive. In other words, the legislature has given a certain amount of discretion to the judge in the making of such appointments. The legislature has not said that the judge must appoint a criminal bailiff or a court constable. It is up to the judge to determine whether or not the needs of the community require such appointments.

Section 2845, General Code, provides for fees of the sheriff, and reads in part as follows:

"For the services hereinafter specified when rendered, the sheriff shall charge the following fees, \* \* \* For receiving a prisoner, fifty cents, and for discharging or surrendering a prisoner, fifty cents, to be charged but once in each case, taking a prisoner before a judge or court per day, seventy-five cents; calling action, ten cents; calling jury, ten cents; calling each witness, five cents; bringing prisoner before court on habeas corpus, one dollar; \* \* \*"

Hence, provision is made for the sheriff to receive his fees while rendering such service to the common pleas court. It would seem that if no criminal bailiff or court constable is appointed that it still remains the duty of the sheriff, by virtue of section 2833, *supra*, to attend the common pleas court.

It is to be noticed that by virtue of section 2830 the sheriff may, with the approval of the judge of the court of common pleas, appoint one or more deputies. The case of *State, ex rel. Wolf, vs. Shafer*, 6 O. N. P. (N. S.) 219, affirmed by the Circuit Court without report, while not decisive of the present question, is nevertheless helpful. The following language appears at page 223:

"\* \* \* It is obvious that the sheriff may be required by the court to perform every duty which the court may impose upon a court constable. That obligation is necessarily involved in the provision, above quoted, that the sheriff shall attend the common pleas court, and whatever the sheriff may do in person he may do by deputy."

It is a fundamental concept of statutory construction that all laws pertaining to the same subject matter should be harmonized if possible. Section 2833 was enacted prior to sections 1541 and 1692, General Code. As stated in 25 Ruling Case Law 1063:

"The Legislature is presumed to have had former statutes before it, to have been acquainted with their judicial construction, and to have passed new statutes on the same subject with reference thereto."

Without further extending this discussion, it is my opinion, in specific answer to your question, that where the judge of the court of common pleas has failed to appoint a criminal bailiff or a court constable, as provided in sections 1541 and 1692, it is the duty of the sheriff, by virtue of section 2833, General Code, to attend upon the common pleas court in both criminal and civil cases.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

2425.

MOTOR VEHICLE—NEW LICENSES NECESSARY FOR MOTOR VEHICLE ACQUIRED PURSUANT TO CONSOLIDATION AGREEMENT BETWEEN CONSTITUENT CORPORATIONS.

*SYLLABUS:*

*Where constituent corporations consolidate to form a new corporation, such consolidated corporation must procure new registration and licenses for the motor vehicles acquired pursuant to such consolidation agreement from the constituent corporations, even though such motor vehicles are already registered and licensed by the constituent corporations.*

COLUMBUS, OHIO, March 29, 1934.

HON. GLEN M. DAILY, *Registrar, Bureau of Motor Vehicles, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

"Corporations A, B, C and D, all organized under the laws of the State of Ohio, and each owning motor vehicle equipment for which license tags have been purchased for the full year of 1933, desire to consolidate pursuant to Section 8623-67 et seq. of the Ohio General Code, to form a new corporation, namely corporation X.

QUESTION: Is the new corporation X required to purchase new license plates for the motor vehicles acquired pursuant to the consolidation, and theretofore owned by corporations A, B, C and D, or will the new corporation X be authorized to use the license tags purchased by corporations A, B, C and D? In other words, is there or is there not authority in Section 6294-1 or any other section of the Motor Vehicle Act to require corporation X to purchase new license plates for the motor vehicles acquired pursuant to the consolidation agreement?"

Section 8623-67 of the General Code, states in part:

"Any two or more corporations organized under this act or any previous corporation act of this state may consolidate into a single