

3451.

COMMON PLEAS JUDGE—PER DIEM AND EXPENSES IN A FOREIGN COUNTY—EXPENSES SHOULD BE ALLOWED BY COUNTY COMMISSIONERS BEFORE BEING PAID.

SYLLABUS:

1. *The twenty dollars per day allowed to a common pleas judge under Section 2253, General Code, for services in a county other than his residence, is fixed by law, and does not require the commissioners to allow same under Section 2460, General Code.*

2. *The expenses of such judge are not fixed by law or by any person or tribunal, and therefore should be allowed by the county commissioners under Section 2460, General Code, before they are paid.*

COLUMBUS, OHIO, July 23, 1931.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—In your recent communication you request my opinion as follows:

“Section 2253 of the General Code, provides that each judge of the court of common pleas who is assigned by the chief justice by virtue of G. C. Section 1469, 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 and his actual and necessary expenses incurred in holding court under such assignment, to be paid from the treasury of the county to which he is so assigned upon the warrant of the auditor of such county.

Section 2460 of the General Code, provides that 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.

Question: Is it necessary that the claim of a common pleas judge for compensation and expense, when assigned to the county in which he does not reside in accordance with the provisions of that part of section 2253 G. C., above referred to, be allowed by the county commissioners, or may it be paid by the county auditor without such allowance?”

Section 2460, General Code, to which you refer, reads:

“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.”

In my opinion No. 3139, issued to Hon. F. H. Buckingham, Prosecuting Attorney of Sandusky County under date of April 10, 1931, consideration was given to Section 2460, supra, in connection with another question. In the body of said opinion, among other things, the following is stated:

"In connection with this question, you are referred to Ohio Jurisprudence, Volume 11, page 587 which contains a comprehensive discussion of the subject. The following appears in Section 315 thereof:

"The grant of power to county commissioners to pass upon claims is somewhat narrow, despite its general character. * * They have no authority to intervene if the amount due is fixed by law, or if, under the law, the claim is to be fixed by some other person or tribunal, and a warrant for its payment issued upon the certificate of such person or tribunal."

Ohio Jurisprudence further states in the same volume, at page 589, that county commissioners must pass upon and allow:

"* * claims for expenses which are allowed by law but the amount of which is not so fixed."

The author cites in support of the conclusion last above quoted, the case of *State ex rel. v. Craig*, 21 O. C. C. 180, which case was affirmed without opinion in 64 O. S. 588. In that case the Circuit Court held that the expenses of an assistant to the deputy supervisor of elections, which were authorized by statute but not definitely fixed, were required to be allowed by the county commissioners before payment could lawfully be made.

In the case you present, Section 2353, General Code, expressly provides that the judge shall receive \$20.00 per day and his expenses. The amount of compensation being expressly fixed at \$20.00 per day, it would follow that no action on the part of the commissioners would be necessary, but the same can not be said with respect to claims for expenses. The law provides that they shall be paid, but vests in no officer the authority to fix the amount, and accordingly, Section 2460, General Code, would apply and would require allowance by the commissioners.

The conclusion is substantiated by the provisions of Section 2570, of the Code, which need not be quoted. It is sufficient to say that this section dealing with the duties of the auditor, contains substantially the same language as Section 2460, with respect to the allowance of claims.

I am therefore of the opinion, in specific answer to your questions, that:

First, the twenty dollars per day allowed to a common pleas judge under Section 2253, General Code, for services in a county other than his residence, is fixed by law, and does not require the commissioners to allow same under Section 2460, General Code.

Second, the expenses of such judge are not fixed by law or by any person or tribunal, and therefore should be allowed by the county commissioners under Section 2460, General Code, before they are paid.

Respectfully,
GILBERT BETTMAN,
Attorney General.