

1366

PAYMENT OF JURY FEES IN ACTIONS OF FORCIBLE
ENTRY AND DETAINED IN A COUNTY COURT—PAYMENT
OF JURY FEES IN OTHER CIVIL CASES IN COUNTY COURT
—§§1913.12, R.C. 1907.291, R.C. DIV. (m)

SYLLABUS:

Under the provisions of Section 1913.12, Revised Code, in actions of forcible entry and detainer in a county court, the party demanding a jury must first deposit money with the judge sufficient to pay the jury fee, which fee is set by division (M) of Section 1907.291, Revised Code; and, in other civil cases in a county court, Section 1907.291, Revised Code, requires that the judge shall charge and collect from the party demanding a jury trial the fees for members of the jury at the rate of one dollar and fifty cents for each juror in each case.

Columbus, Ohio, May 19, 1960

Hon. John F. DeMuth, Prosecuting Attorney
Paulding County, Paulding, Ohio

Dear Sir :

I have your request for my opinion reading as follows :

"I should like to have your official opinion upon the following question :

"Under the provisions of 1913.14 R.C. are jurors in all civil cases in the County Court paid out of the County Treasury?

"Under the provisions of former 1913.30 R.C. which was repealed, effective 11-6-59, the fees of jurors in civil cases were taxed in the costs against the losing party. The new section 1913.14 is silent as to payment of jurors in civil cases but does specifically provide for their payment in criminal cases.

"I assume that since there is no statute providing for jurors' fees in civil cases to be taxed in the costs that the fees would be paid by the county, but I should like to have your official opinion on this. I note that in 14 O. Jur. 2nd Sec. 37 it is stated that "Jury fees are not ordinarily treated as costs and, in the absence of statute, are not taxable as part of the costs in civil proceedings". (Citing *State ex rel. Gallia County v. Meigs County*, 6 ODNP 240, affd 14 OCC 26, 7 OCD 351.)"

Section 1913.14, Revised Code, referred to in your letter refers only to jurors serving in a county court in criminal cases.

The applicable portion of said Section 1913.14, Revised Code, as to the office making payment of said jurors, reads as follows :

" * * * The fees of jurors in any criminal case involving the violation of state law shall be paid out of the county treasury, and in any case involving a violation of a municipal ordinance shall be paid out of the treasury of the municipal corporation which has enacted the ordinance."

As to payment of jury fees in civil actions in a county court, I call your attention to Section 1913.12, Revised Code, reading as follows :

"In actions of forcible entry and detainer before a judge of a county court, the party demanding a jury must first deposit money with such judge sufficient to pay the jury fee."

From January 1, 1958 to November 6, 1959, Section 1913.30, Revised Code, provided for payment of jurors in civil cases in a county court. This section read as follows :

“When the verdict is delivered to the judge of the county court, and before judgment is rendered thereon, each juror is entitled to receive five dollars per day for each day’s service as such juror, from the successful party. Such fees shall be taxed in costs against the losing party. When the jury is not able to agree upon a verdict, the same fees shall be paid them by the party calling the jury, and such fees must be taxed in the cost bill against the losing party.”

Section 1913.30, Revised Code, was repealed effective November 6, 1959 and, since such repeal, the only other provision in the law having application to payment of jury fees in civil cases in county courts that I am able to find, is contained in Section 1907.291, Revised Code, which reads in part as follows :

“For miscellaneous services a judge of a county court shall charge and collect from the persons for whom such services are rendered the following fees :

“* * *

“(M) Fees of jurymen, in each case, in county court, one dollar and fifty cents.

“* * *”

The foregoing Section 1907.291, Revised Code, became effective January 1, 1958 and was in existence from that date along with Section 1913.30, Revised Code, until the date of repeal of the latter, namely, November 6, 1959. In view of the inconsistency between the two provisions of law, the reason for the repeal can be readily seen.

By the provisions of Section 1907.291, *supra*, the judge of a county court is to collect fees for each juror in civil cases at the rate of one dollar and fifty cents in each case from the person for whom such services are rendered.

It will be noted that the section does not require payment of costs by the losing party as did former Section 1913.30, *supra*, nor by the judgment debtor, as do Sections 1907.271 and 1907.281, Revised Code. I believe that if the intent was to hold the judgment debtor liable, the legislature would have so stated. I must conclude, therefore, that the words

“from the persons for whom such services are rendered” refer to the persons who request the jury trials.

Accordingly, it is my opinion and you are advised that under the provisions of Section 1913.12, Revised Code, in actions of forcible entry and detainer in a county court, the party demanding a jury must first deposit money with the judge sufficient to pay the jury fee, which fee is set by division (M) of Section 1907.291, Revised Code; and, in other civil cases in a county court, Section 1907.291, Revised Code, requires that the judge shall charge and collect from the party demanding a jury trial the fees for members of the jury at the rate of one dollar and fifty cents for each juror in each case.

Respectfully,

MARK McELROY
Attorney General