

From the foregoing it appears that the language employed in Section 5078-1, General Code, quoted in your Instructions to Absent Voters, is very clearly sufficiently comprehensive to include notaries public. The compensation to be received by notaries public is partially prescribed in Section 127, General Code, and further in Section 1746-2, General Code, providing for compensation for Justices of the Peace. In neither of these sections do we find provision for compensation for the particular services provided by Section 5078-3, General Code, in assisting voters.

Answering your question specifically, my opinion is that notaries public may not charge a fee for services performed in assisting absent voters under Section 5078-3, General Code.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

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2759.

APPROVAL, BONDS OF THE VILLAGE OF CHESAPEAKE, LAWRENCE COUNTY, OHIO—\$6,240.00.

COLUMBUS, OHIO, October 19, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

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2760.

APPROVAL, BONDS OF CLEVES-NORTHBEND VILLAGE SCHOOL DISTRICT, HAMILTON COUNTY—\$31,000.00.

COLUMBUS, OHIO, October 19, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

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2761.

ELECTIONS—REGISTRATION CITIES UNDER 300,000 POPULATION—EXTRA COMPENSATION OF JUDGE OF ELECTION.

**SYLLABUS:**

1. *In registration cities containing less than three hundred thousand population there is no compensation provided for the judge carrying the returns to the deputy state supervisors or the judge carrying the returns to the county or township clerk or clerk or auditor of the municipality.*

2. *In registration cities containing less than three hundred thousand population, the judge of elections, who is selected as the chairman of the meeting for organization, shall receive one dollar for calling for the sealed package of ballots, and he is not entitled to any further compensation for delivering the ballots, poll books, tally sheets, etc.*

COLUMBUS, OHIO, October 19, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

"We respectfully request you to furnish this Department your written opinion upon the following:

Section 4944 of the General Code provides for the compensation of judges and clerks of election. As to such judges and clerks in registration cities having a population of less than 300,000, it is provided that each shall be allowed and paid \$8.00 for each general election and \$5.00 for each special election at which they serve, and no more, either from the city or county.

Section 5043 of the General Code provides that the judge of elections called by the deputy state supervisors to receive and deliver ballots, poll books, tally sheets and other required papers, shall receive \$2.00 for such service and mileage at the rate of 5 cents per mile to and from the county seat, if he lives one mile or more therefrom. It further provides that the judge of elections carrying returns to the deputy state supervisors, and the judge carrying the returns to the county or township clerk, or clerk or auditor of the municipality, shall receive like compensation. It is further provided that in cities where registration is required, the chairman selected at the meeting for organization shall receive \$1.00 for calling for the sealed package of ballots.

QUESTION 1. In registration cities containing less than 300,000 population, what compensation may be paid to the judge carrying the returns to the deputy state supervisors, and the judge carrying the returns to the county or township clerk, or clerk or auditor of the municipality?

QUESTION 2. May the judge of election in such cities receive any compensation for calling for and delivering ballots, poll books, tally sheets and other required papers, other than the \$1.00 provided for in Section 5043?"

Section 4944, General Code, reads as follows:

"The registrars of each election precinct in such cities shall be allowed and paid for their services as registrars four dollars per day and no more for not more than six days at any one election. In registration cities having a population of three hundred thousand or more by the last preceding federal census, the judges of election, including the registrars as judges and clerks of election, shall each be allowed and paid ten dollars for each general election and five dollars for each special election, at which they serve and no more, either from the city or county. In all other registration cities, the judges of elections, including the registrars as judges and clerks of election, shall each be allowed and paid eight dollars for each general election and five dollars for each special election at which they serve and no more, either from the city or county. No registrar, judge or clerk shall be entitled to the compensation so fixed except upon the allowance and order of the board of deputy state supervisors made at a joint session, certifying that each has fully performed his duty according to law as such, and stating the number of days' service actually performed by each. Such allowance and order shall be certified by the chief deputy and clerk of the board to the city or county auditor."

Also, Section 5043, General Code, to which you refer provides:

"The judge of elections called by the deputy state supervisors to receive and deliver ballots, poll books, tally sheets and other required papers, shall receive two dollars for such service, and, in addition thereto, mileage at the rate of five cents per mile to and from the county seat, if he lives one mile or more therefrom.

The judge of elections carrying the returns to the deputy state supervisors, and the judge carrying the returns to the county or township clerk, or clerk or auditor of the municipality, shall receive like compensation.

In cities where registration is required, the chairman selected at the meeting for organization shall receive one dollar for calling for the sealed package of ballots."

Inasmuch as these two statutes last quoted relate to the same subject matter, it is evident that the two are in *pari materia* and must be construed together.

In examining the history of the act, which we may properly do to arrive at the intention of the Legislature, it will be observed that Section 4944, *supra*, was originally R. S. number 2926t. This section was amended in 88 O. L. 179, and existed in the form as then enacted at the time of the original enactment of what is now Section 5043 in 89 O. L. 452. Section 4944, as amended in 88 Ohio Laws, provided for the compensation of members of the board of elections in the various grades of cities therein enumerated. The section further provided for the compensation of the registrars, judges and clerks, and provided that they should receive "no more" than the compensation as fixed therein. The compensation so provided was for "each election."

In an act found in 89 O. L. 429, for the purpose of, as disclosed by the title, "Enlarging the duties of boards of elections of certain cities" it was provided that judges and clerks appointed thereunder should be compensated as provided in R. S., 2926t, heretofore referred to. The act last mentioned was passed April 18, 1892. The same General Assembly on the same day in an act found on page 432, of said 89 Ohio Laws, which was amendatory of the supplementary to another act providing for the mode of conducting elections enacted what became Section 2966-52 R. S. (now 5043, G. C.) The section then provided:

"The county clerk shall receive for his services under this act such compensation, not exceeding two hundred dollars in any one year, as the county commissioners may deem just and proper.

The judge of election called by the county clerk to receive and deliver the ballots, poll-books, tally-sheets and other required papers, shall receive two dollars for such service, and in addition thereto mileage at the rate of five cents per mile to and from the county seat if he live one mile or more distant therefrom. The judge of the election carrying the returns to the clerk of the court shall receive like compensation. Judges and clerks shall each receive as compensation the sum of three dollars for each election; provided however, that in cities where registration is required the compensation shall remain as now fixed by law."

It will be noted that the section as then enacted specifically provided that the compensation of judges of elections in registration cities was to be as then fixed by law. Section 2926t at said time did specifically fix such compensation in such cities. It is believed that this small part of the voluminous history of this legislation indicates a clear intent on the part of the Legislature in the enactment of what is now Section 5043 to exclude from the benefits thereof officials in registration cities of the class you mention. The legislative history since the original enactments, it is believed, indicates that said Section 5043, *supra*, does not apply to judges in such registration cities, except in the instance where the chairman selected at the meeting of the organization shall receive one dollar for calling for the ballots. This constitutes an exception by reason of the express provision.

The question of course logically arises as to why the Legislature would make a discrimination with reference to the compensation for a similar service. However, this feature of the law was discussed in a former opinion of mine reported at page 253 in the Opinions of the Attorney General for the year 1915, which held:

"No compensation is authorized by law to be paid to election officers for making returns to the clerk of the board of education in school election."

The following is quoted from the body of said opinion:

"It may be difficult to suggest a satisfactory reason for the apparent discrimination by the Legislature between the duty of carrying the election returns to the clerk of the board of education in one case and to the clerk of the township, or clerk or auditor of a municipality in another, but the reason or lack of reason for such discrimination is immaterial. The legislative expression alone will control."

This opinion was approved and followed by the Attorney General in an opinion reported in the Opinions of the Attorney General for the year 1917, page 2185.

It appears that the Legislature has seen fit to provide no compensation for the judges and clerks in the class of cities you mention, for carrying the returns as provided in Section 5043, *supra*.

In passing it may be noted that in an opinion of the Attorney General, found in the Annual Reports of the Attorney General for the year 1913, page 407, a question was presented as to whether the presiding judge of elections in the City of Cincinnati should receive mileage for delivering election returns under Section 5043, General Code. The opinion held such compensation could not be paid for the reason that such judge did not reside the required distance from the county seat, but incidentally pointed out the provisions of Section 4944 which fixes the compensation of such judges in cities having a population of more than three hundred thousand and provides that no further compensation may be received. In other words, an analysis of said opinion indicates that it was the opinion of the Attorney General that Section 4944 prescribed the limitation of the compensation a judge of elections in a city containing inhabitants of more than three hundred thousand may receive for his services in holding an election including the carrying of the returns to the canvassing board.

In view of the foregoing and in specific answer to your first inquiry, you are advised that in registration cities containing less than three hundred thousand population there is no compensation provided for the judge carrying the returns to the deputy state supervisors or the judge carrying the returns to the county or township clerk or clerk or auditor of the municipality.

In answer to your second inquiry, you are specifically advised that in registration cities containing less than three hundred thousand population, the judge of elections, who is selected as the chairman of the meeting for organization, shall receive one dollar for calling for the sealed package of ballots, and he is not entitled to any further compensation for delivering the ballots, poll-books, tally-sheets, etc.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

2762.

SYNOPSIS OF PROPOSED CHIROPRACTIC BILL—APPROVED.

*SYLLABUS:*

*Synopsis of proposed Chiropractic Bill approved.*

COLUMBUS, OHIO, October 19, 1928.

MR. RAYMOND O. SNOW, *Secretary, Ohio State Chiropractic Society, 314 Commonwealth Building, Cleveland, Ohio.*

DEAR SIR:—You have submitted to me under date of October 16, 1928, for my certification under the provisions of Section 5175-29e, General Code, a synopsis of a