

Thus it becomes the duty of each county board of deputy state supervisors of elections to provide for the necessary election supplies and furnish same to all election precincts in their respective counties.

You also inquire, "If all four school boards are voted for in a given precinct, what are the necessary supplies for this precinct. Should there be four sets of poll books, one for each school board or one set for all four?" Since it is the duty of the judges and clerks to make the election returns for the members of the boards of education to the clerk of the proper district of the result of such election, it is readily apparent that if there are four school districts in a given election precinct, it would require four poll books and tally sheets to make proper return to the four different clerks of the boards of education.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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1057.

COUNTY CORONERS—PER ANNUM COMPENSATION—WHEN COMPUTED—HOUSE BILL NO. 485, 87TH GENERAL ASSEMBLY.

SYLLABUS:

1. *The per annum compensation provided for a county coroner by the provisions of House Bill No. 485, passed by the 87th General Assembly, should be allowed and paid for each official year, or part thereof, of his term, of office.*
2. *The year referred to in Section 2856-5a, General Code, being the year next preceding the first Monday of September of each calendar year, is not the period of time for which the maximum and minimum compensation allowed to coroners in counties of less than 400,000 population should be computed.*
3. *Coroners in office on the first Monday of September, 1927, should make a report as of said date, of all fees collected by them during that part of the year next preceding the said first Monday of September, 1927, that follows the effective date of House Bill No. 485, to-wit, from August 1, 1927, to the first Monday in September, 1927.*
4. *Coroners in office at the time of the effective date of House Bill No. 485, to-wit on August 1, 1927, are subject to the provisions of said act.*

COLUMBUS, OHIO, September 26, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion as follows:

"House Bill No. 485 enacted at the recent session of the Legislature amends the provisions of the law with reference to coroners. Section 2823, G. C., provides that the term of the coroner shall begin on the first Monday of January. Section 2856-5a, as enacted by House Bill No. 485, provides that in all counties having a population according to the last Federal Census of

less than 400,000 the coroner of each such county shall report to the county commissioners on the first Monday of September of each year a certified statement of the amount of fees collected by him under all sections of the General Code during the year next preceding the time of making such statement. Section 2866-1 provides that in counties of less than 400,000 the total compensation paid to the coroner as fees under all sections of the General Code shall not exceed \$5,000.00 per annum or be less than \$150.00 per annum. We assume that the per annum mentioned in this section relates to the official year of the coroner, that is, from the 1st Monday of January to the first Monday of January. This section further provides that if the fees in that one year are less than the minimum compensation then such coroner shall be allowed the difference up to \$150.00 to be paid by the county commissioners out of the emergency or contingent fund.

Question 1. Is the year referred to in this provision the official year of the coroner or the year referred to in Section 2856-5a?

Question 2. If the year referred to in Section 2856-5a governs in a county in which the coroner earns less than \$150.00 per year, how is the difference between the fees earned and the minimum salary to be divided between the coroner in office from September to January and the coroner in office from January to September?

Question 3. Will the coroner now in office be required to make a report under Section 2856-5a for the year ending the first Monday in September 1927, and if so, will the minimum compensation apply to such coroner?

Question 4. Does this law in any way affect coroners in office at the time the act became effective?"

Sections 2856-5a and 2866-1, General Code, (112 O. L. 204 and 205) read as follows:

Sec. 2856-5a. "In all counties having a population, according to the last federal census, of less than four hundred thousand the coroner of each such county shall report to the county commissioners on the first Monday of September of each year a certified statement of the amount of fees collected by him, under all sections of the General Code, during year next preceding the time of making such statement, naming the party or parties to each case."

Sec. 2866-1. "In counties having a population, according to the last federal census, of less than four hundred thousand the total compensation paid to the coroner as fees, under all sections of the General Code, in no case shall exceed five thousand dollars per annum or be less than one hundred and fifty dollars per annum. If the fees in any one year are less than the minimum compensation allowed by law then such coroner shall be allowed the difference up to one hundred and fifty dollars to be paid by the county commissioners out of the emergency or contingent fund."

Prior to the enactment of House Bill No. 485, by the 87th General Assembly, relating to the salary, fees and duties of county coroners, the compensation of coroners in all counties consisted of fees as provided for by Sections 2856-3 and 2666, General Code.

The provisions of said House Bill No. 485, are to the effect that coroners in counties having a population of more than 400,000 according to the last Federal

census, shall receive a salary of \$6,000 per year, payable from the county treasury, (Section 2856-4, General Code.) In such counties the coroner is required to pay in to the county treasury all fees to which he shall be entitled under all sections of the General Code, forthwith, upon receipt of the same, and to file with the county commissioners on the first Monday in September of each year, a certified statement of the amount of all fees collected during the same period, (Section 2856-5, General Code.)

No change is made affecting the amount of compensation to be paid to coroners in counties having a population of less than 400,000 other than that the total amount which such coroners are permitted to receive shall not be more than \$5,000, nor less than \$150 per year. If the total amount of fees earned by a coroner in counties having a population of less than 400,000 is less than \$150, he shall be paid a sufficient amount from the emergency or contingent fund of the county to make up the difference, up to \$150. No provision is made for the payment into the county treasury of fees collected by coroners in counties with a population of less than 400,000. It may well be implied, however, that if he should receive fees in excess of \$5,000 in any one year, he would be required to account for the excess.

As a matter of fact, the fees which a coroner receives, other than those received when he performs the duties of sheriff, are paid to him from the county treasury as allowed to him upon his return of the performance of inquests and autopsies. Each inquest or autopsy requires a separate return on the back of which is a statement of the fees earned in connection with the same and in practice a voucher is drawn by the county auditor, after the county commissioners pass on the correctness of the items of fees as shown by the return, for each separate return or after an accumulation of several such returns as they see fit, and the coroner is paid the amount of the voucher.

It seems clear that the intent of the Act, House Bill No. 485, could not be to require such a vain procedure as to require coroners in counties of over 400,000 population to draw their fees and then pay them over to the treasury. Such a procedure would serve no purpose and would require more book-keeping than necessary. It is my opinion that the requirement that coroners in counties of more than 400,000 population file certified statements of fees collected serves no purpose, other than whatever value such statement may have as records, so far as fees earned by the coroners, other than those earned while performing the duties of the sheriff, are concerned and that the fees earned by coroners in such counties, other than the fees which accrue to the office when the coroners perform the duties of the sheriff, should not be drawn by the coroner.

The term of office of county coroner begins on the first Monday of January after his election, and continues for two years, (Sec. 2823, General Code.) It seems clear that the provisions of Section 2856-4, General Code, fixing a salary of \$6,000 per annum for coroners in counties with a population of more than 400,000, and Section 2866-1, General Code, fixing a maximum and minimum amount which coroners in counties with a population of less than 400,000 may receive per annum, the term per annum means per year of his term of office.

Section 260-1, General Code, reads in part, as follows :

“Beginning with Jan. 1, 1928, the fiscal year of the state and beginning with January 1, 1926, the fiscal year of every county, municipal corporation, \* \* \* shall begin at the opening of the first day of January of each calendar year and end at the close of the succeeding thirty-first day of December. All provisions of law heretofore or hereafter enacted and re-

lating to the levying of taxes, the collection, appropriation or expenditures of revenues or the making of financial reports or statements for a fiscal year or other year shall be construed to refer and apply to the fiscal year as herein defined, except that reports by title V, chapter 5, part second of the General Code shall be for the school year as defined in Section 7689 of the General Code \* \* \* ."

The fact that the foregoing statute states that "all provisions of law heretofore or hereinafter enacted relating to \* \* the making of financial reports or statements for a fiscal year or other year shall be construed to refer and apply to the fiscal year as herein defined" does not preclude the legislature from later providing for the making of reports for a year other than the fiscal year as it apparently has done in this case. The clause, "during the year next preceding the time of making such statement" clearly means exactly what it says and as used in Section 2856-5a, supra, means the year preceding the first Monday of September the time when the statement is to be made.

The usefulness of this statement is largely that of a summary report, as the computation of the maximum and minimum amount of fees to which a coroner may be entitled is not dependent on the filing of this certified statement or what it contains. The report of inquests and autopsies and of fees earned by a coroner as well as the vouchers and receipted warrants showing the amount of fees paid to a coroner are at all times on file and may be summarized at any time. The filing of the annual statement as required by the statute does not prevent a coroner from filing supplemental statements covering parts of the year. Upon retiring from office the amount of compensation for his last preceding year may be determined from the records and if necessary for that purpose he may file a supplemental statement so that it may be determined whether he be entitled to further compensation to make up the minimum amount to which he is entitled or whether he must account for any excess over \$5,000 which he has drawn during the year.

Article II, Section 20 of the Constitution of Ohio, to the effect that no change in compensation shall affect the salary of any officer during his existing term does not prevent coroners now in office from becoming amenable to the provisions of House Bill No. 485 for the reason that coroners were not paid a salary before the enactment of this law, but were compensated by fees earned.

In the case of *Gobrecht vs. Cincinnati*, 51 O. S. 68, at page 72, Judge Spear, after quoting Article II, Section 20 of the Constitution of Ohio said:

"The question, therefore, is, whether or not the pay of a member of the board is 'salary' within the meaning of the above section?

We think it is not. A general definition of salary includes compensation. General definitions, do not, however, cover all cases. Salary is compensation, but, under the section quoted, compensation is not, in every instance, salary. The point is emphasized by this court in the case of *Thompson vs. Phillips*, 12 Ohio St. 617, where it is said that 'it is manifest from the change of expression in the two clauses of the section that the word "salary" was not used in a general sense, embracing any compensation fixed for an officer, but in its limited sense, of an annual or periodical payment for services—a payment dependent on the time and not on the amount of the service rendered.' And it was there held that a percentage compensation allowed by law to a public treasurer for official duties, could be altered during his term. It is the 'salary' which shall not be changed during the term, not necessarily the compensation.

We think the compensation in the case at bar comes within the principle of the case cited, although a per diem compensation. It is not, within the meaning of the section quoted, 'salary'. Hence, an increase in the pay of a member during his term, is not prohibited by the constitution."

In the case of *Theobald vs. State* 10 O. C. C. (N. S.) 175 it was held that a change from the fee system to salary was not a violation of Article II, Section 20 of the Constitution of Ohio, citing as authority therefor the case of *Gobrecht vs. Cincinnati*, supra, and the case of *Thompson vs. Phillips*, 12 O. S. 617.

The statement filed by a coroner on the first Monday of September of his first year in office would of course not show any fees collected previous to the first Monday of the preceding January for the reason that he had not collected any fees prior to that time. A coroner upon retiring from office should file a statement showing the amount of fees collected between the preceding first Monday in September and the time he retired from office although the statute does not specifically require him to do so.

House Bill No. 485, supra, became effective August 1, 1927. The salaries and compensation of coroners then in office for the period following August 1, 1927, should be computed and allowed and paid on the basis of the ratio the time from August 1, 1927, to the first Monday in January, 1928, bears to a calendar year.

Specifically answering your question, I am of the opinion that :

First, the per annum compensation provided for a county coroner by the provisions of House Bill No. 485, passed by the 87th General Assembly, should be allowed and paid for each official year or part thereof of his term of office.

Second, the year referred to in Section 2856-5a, General Code, being the year next preceding the first Monday of September of each calendar year is not the period of time for which a maximum and minimum compensation allowed to coroners in counties of less than 400,000 population should be computed.

Third, coroners in office on the first Monday of September, 1927, should make a report as of said date of all fees collected by them during that part of the year next preceding the said first Monday of September, 1927, that follows the effective date of House Bill No. 485, to-wit, from August 1, 1927, to the first Monday in September, 1927.

Fourth, coroners in office at the time of the effective date of House Bill No. 485, to-wit, on August 1, 1927, are subject to the provisions of said act.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1058.

OFFICES—JUSTICE OF PEACE AND MEMBER OF BOARD OF EDUCATION OF RURAL SCHOOL DISTRICT COMPATIBLE—CLERK OF SUCH BOARD AND JUSTICE OF PEACE COMPATIBLE.

*SYLLABUS:*

1. *A justice of the peace may also hold the office of member of the board of education of the rural school district in which he resides*