

OPINION NO. 78-063**Syllabus:**

1. A county coroner who testifies in a county other than the county in which he holds office, as to observations made in his official capacity, is entitled to witness fees prescribed by R.C. 2335.06 and R.C. 2335.08.

2. A county coroner who testifies in a county other than the county in which he holds office, as to observations made in his official capacity, is not entitled to expert witness fees.

To: Roger R. Ingraham, Medina County Pros. Atty., Medina, Ohio
By: William J. Brown, Attorney General, December 20, 1978

I have before me your request for my opinion, which reads as follows:

Ohio Revised Code Sections 2235.06 and 2335.08 provide for the compensation of witnesses in civil and criminal cases respectively. The rate of compensation is twelve (12) dollars per day for a full day's attendance and six (6) dollars per day for one-half day's attendance.

A question has been raised concerning the fee due a County Coroner who testifies for the State in a criminal case. Is a County Coroner, who testifies by deposition in a county other than the county in which he holds office, as to observations made in his official capacity in a criminal case, entitled only to those witness fees prescribed in the above-mentioned Revised Code sections, or may he demand and receive witness fees as are deemed just and proper for an expert witness? If the County Coroner can command compensation as an expert witness, who is responsible for payment of such a fee and from what source shall it come?

R.C. 2335.06(A) sets the amount of fees as follows:

Each witness in civil cases shall receive the following fees:

(A) Twelve dollars for each full day's attendance and six dollars for each half day's attendance as a court of record, mayor's court, or before a person authorized to take depositions, to be taxed in the bill of costs. Each witness shall also receive ten cents for each mile necessarily traveled to and from his place of residence to the place of giving his testimony, to be taxed in the bill of costs.

R.C. 2335.08 provides, in pertinent part, as follows:

Each witness attending, under recognizance or subpoena issued by order of the prosecuting attorney or defendant, before the grand jury or any court of record, in criminal causes, shall be allowed the same fees as provided by section 2335.06 of the Revised Code in civil causes . . .

R.C. 307.52 provides for payment of fees to expert witnesses upon application of the prosecuting attorney. Payment of fees pursuant to that section requires approval of both the court and the board of county commissioners.

An answer to your request first requires a consideration of whether or not county officials are entitled to witness fees.

Both R.C. 2335.06 and R.C. 2335.08 allow certain fees to "each witness." Neither section makes a distinction between witnesses who are public officials and witnesses who are not. An examination of the Revised Code reveals no statutory prohibition against county officials collecting such fees. In the absence of any such prohibition, the general rules set forth in State, ex rel. Shaffer, v. Cole, 132 Ohio St. 338 (1937), applies. In that case, the Supreme Court determined that:

In approaching this problem it is helpful to remember the general rule that when a public officer, in the discharge of his official duties, is not required to be present in person upon the trial of a particular case, he is entitled to the same fees as any private person if he is called as a witness therein.

The word "required" has been interpreted to mean only those officers, such as the sheriff or the clerk of courts, who are under a statutory duty to attend all sessions of the court. See, 1941 Op. Att'y Gen. No. 3854, p. 438-445; 1955 Op. Att'y Gen. No. 5677, p. 409-418. Because a county coroner who testifies for the State in a criminal case in a foreign county is not an officer who is "required to be present in person upon the trial of a particular case," it is my opinion that such an officer is entitled to the fees prescribed by R.C. 2335.06 and R.C. 2335.08, supra.

The question as to whether the county coroner may demand and receive his witness fee is separate and distinct from the question of his right to retain it for his own use. However, the ultimate disposition of the statutory witness fees paid to a public officer is not raised by your question, and therefore not considered.

The second part of your question concerns whether or not the county coroner may demand and receive expert witness fees when testifying in a county other than the county in which he holds office.

In 1955 Op. Att'y Gen. No. 5677, p. 409, one of my predecessors was faced with a similar question. That opinion considered the issue of whether Dr. B., then Superintendent of the Lima State Hospital for the Criminally Insane, could demand and receive expert witness fees for his testimony in a criminal case. Dr. B., a court appointed psychiatrist, testified as to the defendant's sanity. My predecessor concluded that:

It is my opinion that the fact of state employment alone does not prevent Dr. B. from receiving a fee. So long as he is not testifying as to a matter within the scope of his official duties, he stands in the same position as any other expert witness appointed under the statute. Section 2945.40, Revised Code, provides that when the present sanity of a defendant is in question he may be referred to the Lima State Hospital for observation. In such a case I do not believe that Dr. B. would be entitled to an expert's fee for testifying as to the results of his official observation. But when he is appointed only in his capacity as a qualified physician, there is no reason why the fee should not be paid simply because he happens to be a state employee. (emphasis added)

While Dr. B. testified only in his private capacity as a qualified physician, it is clear from the information you have provided that the county coroner is to testify as to observations made in his official capacity. Moreover, the information which the coroner is to provide in his testimony was gathered in his official capacity. Accordingly, under the test set out in the 1955 opinion, supra, the coroner would not be entitled to expert witness fees as his testimony would concern observations made and information gathered in the scope of his official duties.

Therefore, in specific answer to your question, it is my opinion and you are so advised that:

1. A county coroner who testified in a county other than the county in which he holds office, as to observations made in his official capacity, is entitled to witness fees prescribed by R.C. 2335.06 and R.C. 2335.08.
2. A county coroner who testifies in a county other than the county in which he holds office, as to observations made in his official capacity, is not entitled to expert witness fees.