

**Note from the Attorney General's Office:**

1934 Op. Att'y Gen. No. 34-3319 was overruled  
by 2007 Op. Att'y Gen. No. 2007-046.

3318.

APPROVAL, BONDS OF CENTERBURG VILLAGE SCHOOL DISTRICT,  
KNOX COUNTY, OHIO, \$9,610.20.

COLUMBUS, OHIO, October 17, 1934.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

3319.

APPRAISER—IN PROCEEDING UNDER EXECUTION NOT ENTITLED  
TO MORE THAN FIVE DOLLARS PER DAY.

*SYLLABUS:*

1. *Where a proceeding under execution involves more than one appraisal, the appraiser is entitled to a sum not to exceed five dollars per day and his necessary expenses, unless the court fixes his compensation at a greater amount in accordance with the proviso in section 3006, General Code.*

2. *In the event that the same appraiser is called upon by the sheriff on the same day to make appraisals in different and unrelated proceedings on execution, such appraiser should not be paid on the basis of the number of appraisals made but should receive a sum not to exceed five dollars per day and his necessary expenses, unless the court fixes his compensation at a greater amount in accordance with the proviso in section 3006, General Code.*

COLUMBUS, OHIO, October 18, 1934.

HON. RAY B. WATTERS, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“Some time ago we wrote to you, asking for an opinion in reference to Sections 3006 and 3006-1 of the General Code. We wish to thank you for your opinion in that case. However, the real point at issue does not seem as yet to have been settled. The question has been raised as to whether or not appraisers appointed by the sheriff under an execution are entitled to receive as compensation for the appraisal the sum of \$5.00.

Would you kindly render us an opinion on these points:

1. Where a proceeding under execution involves more than one appraisal, is the appraiser entitled to a fee of \$5.00 for each appraisal?

2. In the event that the same appraiser is called upon by the sheriff on the same day to make appraisals in different and unrelated proceedings on execution, is the appraiser entitled to \$5.00 for each appraisal or for each proceeding?”

The opinion referred to in your letter is to be found in Opinions of the

Attorney General for 1933, Volume I, Page 221. The syllabus of that opinion reads as follows:

"1. Section 3006, General Code, by reason of the irreconcilable inconsistency of its provisions with those contained in Section 11714, General Code, supersedes the provisions of such latter section, in so far as it purports to fix the compensation for appraisers of real estate sold as on execution.

2. By virtue of the provisions of Section 3006, General Code, appraisers of real estate in a judicial sale as on execution are entitled as compensation for their services to the sum of one dollar per day.

3. Since appraisers of land in foreclosure sales are required to be appointed by the officer making the sale, Section 3006-1, General Code, grants no authority to a court of common pleas to fix a higher rate of compensation therefor."

Section 3006, General Code, at the time of the rendition of the above opinion read as follows:

"Each commissioner, to make partition of lands or to assign dower, for the time so engaged, and in going and returning, shall receive two dollars each day, but, if such lands lie in more than one county, two dollars and fifty cents each day. Except when otherwise provided, each person called by an officer to appraise real or personal property on execution, replevin or attachment, or to fix the value of exempt property shall receive one dollar each day."

However, since the rendition of the above opinion, the legislature amended section 3006, General Code (115 O. L. 408). Such section now reads as follows:

"Each commissioner, to make partition of lands or to assign dower, for the time so engaged, and in going and returning, shall receive not to exceed five dollars each per day, as the court shall determine. Each person called by an officer to appraise real or personal property on execution, replevin or attachment, or to fix the value of exempt property shall receive compensation as follows: Not to exceed five dollars per day and necessary expenses, provided, however, that in the appraisal of real estate the court may fix said compensation at more than five dollars per day but not to exceed in the aggregate thirty cents on each thousand dollars of the tax valuation thereof."

It is significant to note that prior to the recent amendment of section 3006, General Code, appraisers of real estate received the sum of one dollar per day for their services. Considerable difficulty arose by virtue of the fact that competent appraisers of real estate could hardly be expected to render their services, which were often those of an expert, for such a small sum. Consequently, the legislature attempted to remedy this evil by increasing the compensation to five dollars per day plus the appraiser's necessary expenses. The amendment likewise permits the court to fix the compensation in excess of five dollars within certain limitations.

In your first question you inquire as to whether or not appraisers are paid on the basis of the number of appraisals they make in a single proceeding. With

the language of the above statute and the purpose of the amendment clearly in mind, it would follow that the number of appraisals is immaterial. The appraiser receives a sum not to exceed five dollars per *day* and expenses, unless the court fixes his compensation at a greater amount in accordance with the latter provisions of section 3006, General Code.

Your second question relates to where the appraiser is called on the same day to make appraisals in different and unrelated proceedings on execution. You inquire whether the appraiser may be paid five dollars for each proceeding. The language of section 3006 clearly fixes the compensation on a per diem basis. It would seem to follow that the question of unrelated appraisals is immaterial.

An examination of the history of Amended Senate Bill No. 243 (section 3006, General Code) supports the conclusion herein reached. The pertinent part of section 3006, General Code, as originally introduced, provided in line ten of the bill as follows: "not to exceed five dollars per day and necessary expenses." The Ohio Senate Journal for the regular session of the 90th General Assembly at page 401 shows the following amendment: "Line 10, strike out 'day' and insert 'parcel.'" This particular line of Amended Senate Bill No. 243 was amended by the House of Representatives to read as it was originally enacted. In the Senate Journal at page 735 the following appears: "That the Senate and House of Representatives agree to the following amendments: In line 10, strike out 'parcel' and insert 'day.'" In the Ohio House Journal for the regular session of the 90th General Assembly, the following appears at page 1069: "That the Senate recede from its disagreement to the following amendments and agree to the same, \* \* \* strike out 'parcel' and insert 'day.'" These amendments would tend to show that the legislature intended that appraisers in these cases should be paid on a per diem basis and not on a "parcel" or "proceeding" basis.

Without further extending this discussion, it is my opinion in specific answer to your questions:

1. Where a proceeding under execution involves more than one appraisal, the appraiser is entitled to a sum not to exceed five dollars per day and his necessary expenses, unless the court fixes his compensation at a greater amount in accordance with the proviso in section 3006, General Code.

2. In the event that the same appraiser is called upon by the sheriff on the same day to make appraisals in different and unrelated proceedings on execution, such appraiser should not be paid on the basis of the number of appraisals made but should receive a sum not to exceed five dollars per day and his necessary expenses, unless the court fixes his compensation at a greater amount in accordance with the proviso in section 3006, General Code.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

3320.

#### RACCOON—DEFINITION OF RACCOON DEN.

##### SYLLABUS:

*A raccoon's den is any cave or hollow, a hollow tree or stump, a tile drain, culvert, catch basin or any other place of concealment in which a raccoon lodges or where it may seek refuge when pursued by a hunter*