

which is post dated so as to make such claim valid on its face, is as a matter of law a false or fraudulent claim within the meaning of Section 13105, General Code.

5. Whether or not a conviction could be had under Section 13105, General Code, where one actually sells or furnishes supplies or services to a municipality, without the certificate prescribed by Section 5660, General Code, having been filed, and then post dates an invoice for such supplies or services in order that pay may be collected for such supplies or services which have been furnished is a practical question which must be left primarily to the judgment of the proper prosecuting attorney and grand jury in the first instance, and then to the determination of a petit jury, under proper instructions from the court.

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

514.

COMMON PLEAS COURT—AUTHORITY TO APPOINT SALARIED  
PROBATION OFFICERS—AUTHORITY OF MUNICIPAL JUDGES—  
SECTIONS 1554-1 AND 1662, GENERAL CODE, DISCUSSED.

*SYLLABUS:*

1. *A judge of the common pleas court has no authority to appoint a salaried probation officer except as provided in Section 1554-1, General Code.*
2. *Municipal judges, when authorized by statute, may appoint probation officers, which officers may receive such salary as the proper officers of the municipality prescribe, even though a county department of probation has been established by the common pleas court, as authorized by Section 1554-1, General Code.*
3. *When a juvenile judge of the county has appointed a salaried probation officer, as authorized by Section 1662, General Code, it is not lawful to unite such probation department with the county department of probation authorized by Section 1554-1, General Code.*

COLUMBUS, OHIO, May 20, 1927.

HON. JOHN E. HARPER, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication reading as follows:

“House Bill 197, 86th General Assembly, provides for a system of local administration of probation, parole and conditional pardon, and places certain duties in respect thereto upon the State Department of Public Welfare. In this connection we respectfully ask your opinion on the following questions:

1. Has a common pleas judge the authority to appoint a salaried probation officer without the establishment of a county department as provided for by Section 1554-1?
2. If a county department of probation has been established, may a municipal judge appoint a probation officer, salaried, who is not a member of the county department?
3. If a county juvenile court has already a salaried probation officer regularly employed, is it possible to unite the probation work of that court or to merge it with the work of a county department of probation later established under Section 1554-1?

4. If the uniting of the probation work of the Juvenile and Common Pleas Court is possible as asked in the previous question, which Judge, the Common Pleas or Juvenile, has the final authority in administering the affairs of such probation department."

The power and authority for courts to establish a probation department and appoint probation officers is given by statute. Section 1554-1, General Code, reads as follows:

"The judge of the court of common pleas of a county, or the judges of such court in joint session, if they deem advisable, may with the concurrence of the board of county commissioners establish a county department of probation. The establishment of such department shall be entered upon the journal of said court and the clerk thereof shall thereupon certify a copy of such order to each elective officer and board of the county. Such department shall consist of a chief probation officer, and such number of other probation officers and employes, clerks and stenographers, as may be fixed from time to time by the judge or judges. The judge or judges of the common pleas court of the county shall appoint to positions within the department, fix the salaries of appointees within the amount appropriated therefor by the board of county commissioners and supervise their work; provided that no person shall be appointed as probation officer who does not possess such training, experience, and other qualifications as may be prescribed by the department of public welfare of the state. All positions within such department shall be in the classified service of the civil service of the county.

Probation officers shall, in addition to their respective salaries, receive their necessary and reasonable traveling and other expenses incurred in the performance of their duties. Such salaries and expenses shall be paid monthly from the county treasury in the manner provided by law for the payment of the compensation of other appointees of the judge or judges of the common pleas court."

The only authority for the appointment of a probation officer by the common pleas court, other than that contained in said Section 1554-1, is that contained in Section 13712 of the General Code, which reads as follows:

"When the trial court has no regular probation officer or officers, or no county department of probation has been established, no order for probation shall be issued, unless the court or magistrate designate some suitable person to act as probation officer in such case, who shall make written reports, at designated periods not less than once each month, concerning the conduct of a probationer in his charge."

Section 13713 prescribes the duty of such officer and also provides that "a probation officer shall be entitled to necessary expenses in the performance of his duty." While Section 13712 of the General Code makes provision for the appointment of a probation officer by the trial court, and Section 13713, makes provision for the payment of his necessary expenses in the performance of his duties, there is no authority given to pay him a salary or other compensation for the services rendered.

Therefore, I am of the opinion that the common pleas court has no authority to appoint a salaried probation officer without the establishment of a county department of probation.

You also ask if a municipal judge may appoint a salaried probation officer who

is not a member of the county probation department, where a county department of probation has been established. The legislature has created municipal courts in many cities of the state and in some instances such municipal court acts provide for the appointment of probation officers by these courts. It would require an examination of each municipal court act to determine whether or not such provision is made in all of them. It is not necessary to do this to answer your question. The statutes to which I refer are Sections 1558-1 to 1558-93b, General Code, both inclusive, and Sections 1579 to 1579-1081, General Code, both inclusive. For instance, in Section 1558-88, General Code (Columbus, Ohio), among other things, it is provided:

"The council of the city of Columbus shall provide for one or more probation officers who shall be electors and residents of the city of Columbus, and who shall have all the powers of regular police officers, and shall devote their time to the consideration of persons placed upon probation.

Probation officers shall be appointed by the judges of the municipal court, and serve at the pleasure of the court. They shall receive such compensation as the council by ordinance may prescribe. If a member of the police department is appointed probation officer, he shall have the privilege of returning at any time to active service in the department and to the same rank and standing as he had at the time of appointment as probation officer."

Similar provisions are found in the statutes for Cleveland and Youngstown, Ohio (see Sections 1579-45e and 1558-173, General Code). Therefore, where such power is specifically given to the judges of the municipal court in the act by which the court was created, I am of the opinion that the municipal judges may lawfully appoint probation officers who receive such salary as the city council or other officers therein provided may prescribe, regardless of whether or not a county department of probation has been established by the common pleas court, as provided for by Section 1554-1, General Code.

In your third question you ask, if a county juvenile court has a salaried probation officer regularly employed, is it possible to unite or merge the probation work of that juvenile court officer with the work of the county department of probation later established under Section 1554-1, General Code.

The legislature of Ohio, by Section 1662, General Code, has made provision for a juvenile judge to appoint one or more salaried probation officers to serve as such during the pleasure of that judge. The legislature in enacting Sections 1554-1 to 1554-6, inclusive, also enacted as a part of the same act Section 1663-1, General Code, which reads as follows:

"When a county department of probation has been established in the county and the judge designated to exercise juvenile jurisdiction therein does not appoint a salaried probation officer, all powers and duties of the probation officer or officers provided for in this chapter shall vest in and be imposed upon such county department of probation."

I am therefore of the opinion that it is not lawful to unite or merge such probation department of a juvenile court with the county department of probation, established under Section 1554-1, General Code. However, if the judge designated to exercise juvenile jurisdiction should not appoint a salaried probation officer, all powers and duties of the juvenile probation officer would vest in the county department of probation.

The answer to your third question makes it unnecessary to consider or discuss your fourth question.

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

515.

COUNTY COMMISSIONERS — SHOULD MAKE ALLOWANCES TO SHERIFF FOR ACTUAL AND NECESSARY EXPENSE INCURRED WHILE TRANSPORTING PRISONER TO PENITENTIARY.

*SYLLABUS:*

*County commissioners should make allowances to the sheriff for his actual and necessary expenses incurred and expended in transporting prisoners to the penitentiary or a reformatory and the reasonable cost of a chauffeur for the sheriff's automobile in conveying such prisoner is a proper charge and one of the actual and necessary expenses incurred in transporting such prisoner.*

COLUMBUS, OHIO, May 20, 1927.

HON. ALBERT T. STROUP, *Prosecuting Attorney, Van Wert County, Van Wert, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication which is as follows:

“Is it proper for the County Commissioners to allow a bill presented to them by the Sheriff, demanding pay for a chauffeur for the Sheriff's automobile in conveying a prisoner to the Mansfield Reformatory on a felony charge?”

The Sheriff has in the office a Deputy and also a Traffic Cop. He picked up an acquaintance on the street and asked him to do the driving and is now asking \$3.50 for the driver's services.”

By the terms of Section 13725, General Code, provision is made for the sheriff, in transporting convicts to the penitentiary or reformatory, to take one guard for every two convicts transported if he deems it necessary. This section further provides that if the sheriff so desires he may make written application to the trial judge and the trial judge may authorize a larger number of guards if he thinks it necessary. Provision is also made therein for the payment of these guards. However, when there is but one prisoner to be taken this section would not apply and the sheriff would be required to transport the prisoners and look to the county commissioners for the expenses incurred in such transportation. Section 2997, General Code, provides in part as follows:

“In addition to the compensation and salary herein provided the county commissioners shall make allowances quarterly to each sheriff for keeping and feeding prisoners, as provided by law, for his actual and necessary expenses incurred and expended in pursuing or transporting persons accused or convicted of crimes and offenses” \* \* \*