

I have carefully examined said lease, find it correct in form and legal, and am therefore returning the same to you with my approval endorsed thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.

943.

APPROVAL, BONDS OF THE VILLAGE OF SEBRING, MAHONING COUNTY, OHIO, \$71,335.00.

COLUMBUS, OHIO, September 2, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

944.

APPROVAL, BONDS OF THE VILLAGE OF COLUMBIANA, COLUMBIANA COUNTY, OHIO, \$4,500.00.

COLUMBUS, OHIO, September 2, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

945.

AUTOPSY—MUST BE AUTHORIZED BY PROSECUTING ATTORNEY—IF PERFORMED BY A PERSON OTHER THAN CORONER PAY MAY BE ALLOWED BY COUNTY COMMISSIONERS.

SYLLABUS:

Where the prosecuting attorney authorized an autopsy and a physician or surgeon other than the coroner performed such autopsy on a dead body found in the county, the board of county commissioners may, under Section 2495, General Code, in its

discretion allow the physician such a sum as it deems reasonable for the services so performed.

COLUMBUS, OHIO, September 2, 1927.

HON. EDWARD C. STANTON, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—I am in receipt of your communication of recent date reading as follows:

“Your opinion is requested on the following proposition:

Under the provisions of Sections 2856 and 2856-3 of the General Code, a coroner may perform an autopsy on the body of a person on authority of the Prosecuting Attorney and be paid for the same.

There does not seem to be any law permitting payment for such autopsy to any other physician.

The coroner of Cuyahoga county was sick for a protracted period and autopsies were performed by another physician under authorization to the coroner by the prosecuting attorney.

May payment be made for such services?”

It is manifest from the date of your letter that the autopsies performed by the physician other than the county coroner and in his absence were performed prior to August 1, 1927, the effective date of House Bill No. 485, passed by the 87th General Assembly, the title of which is as follows:

“AN ACT

To amend Section 2829 and Section 2856-2 and repeal Section 1745 of the General Code, and to supplement Sections 2856 and 2866 of the General Code, by the enactment of supplemental sections to be known as 2856-2a, 2856-4, 2856-5, 2856-5a, 2856-6 and 2866-1, relative to salary, fees and duties of coroners.”

Section 2829, General Code, as amended in House Bill No. 485, supra, reads as follows:

“When the office becomes vacant by death, resignation, expiration of the term of office or otherwise, or when the coroner is absent from the county, or unable from sickness or other causes to discharge the duties of his office, the county commissioners shall appoint a suitable person to fill the vacancy, who shall give bond and take the oath of office as prescribed for the coroner. When such a person is temporarily acting in the capacity of coroner, he shall receive the compensation equivalent to that allowed by law to coroners in such cases.”

Since the amendment of the above statute it is now the duty of a board of county commissioners, if the office of coroner becomes vacant by death, resignation, expiration of the term or otherwise, to appoint a coroner. Likewise, the above statute as now amended, directs the county commissioners to appoint a suitable person to fill the office when the coroner is absent from the county, or when from sickness or other cause he is unable to discharge the duties of the office. In such event provision is made in the statute that such appointee shall receive the compensation

equivalent to that allowed by law to the coroner, but there is no change in the law as it formerly existed as to the persons who may lawfully perform autopsies, or any change as to the payment of the services therefor when performed.

Section 2856-3, General Code, as enacted in 109 O. L. 544, provides:

"In counties having a population according to the last federal census of 100,000 or more, no person shall be eligible to the office of coroner except a licensed physician of good standing in his profession. For his services in the performance of an autopsy under section 2856 of the General Code the coroner shall receive a fee of \$20.00 and for decomposed or infected bodies \$40.00 to be paid from the county treasury in the same manner as other fees of the office."

It is to be observed that the last sentence of the statute, *supra*, fixes the compensation of a coroner for his services when he performs autopsies under Section 2856, General Code, the pertinent part of which section reads:

"When informed that the body of a person whose death is supposed to have been caused by violence, has been found within the county, the coroner shall appear forthwith at the place where the body is, * * * and proceed to inquire how the deceased came to his death, whether by violence from any other person or persons * * * and all circumstances relating thereto * * * . A report shall be made from the personal observation of the corpse; statements of relatives, of other persons having adequate knowledge of the facts, and such other sources of information as may be available or by autopsy if such autopsy is authorized by the prosecuting attorney of the county."

By the provisions of Section 2856-3, *supra*, a coroner is required to be a licensed physician only in counties having a population of 100,000 or more according to the last federal census. It is manifest that in counties having a population of less than 100,000 if the coroner be not a physician or surgeon, and it is deemed necessary and desirable by the proper officials to have an autopsy performed on a dead body found in the county, it is necessary that such autopsy be performed by a physician or surgeon, or by one similarly qualified.

The legislature has provided that when authorized by the prosecuting attorney of the county, the coroner may obtain evidence as to the cause of the death of the body found, by an "autopsy."

In the case of *Suddeth vs. Traveling Ins. Co.* 108 Fed. 822, 823, the word "autopsy" is judicially defined as:

"An examination of a dead body by dissection. Dissection is the cutting apart of the dead body", etc.

As to the payment of such services if they be performed by the coroner, he is entitled to receive the fee therefor as provided by that part of Section 2856-3, General Code, which reads:

"For his services in the performance of an autopsy under Section 2856 of the General Code the coroner shall receive a fee of \$20.00 and for decomposed or infected bodies \$40.00 to be paid from the county treasury in the same manner as other fees of the office,"

while if the autopsy be made by a physician or surgeon other than by the coroner of the county, payment for such services may be made by the county commissioners as provided in Section 2495 General Code, *infra*.

A similar question was considered by my predecessor in office in an opinion reported in Opinions, Attorney General, 1924, Vol. 1, page 438, in which I concur. Paragraphs 2 and 3 of the syllabus read as follows :

"2. An autopsy may not legally be made without authorization by the prosecuting attorney of the county wherein a dead body is found.

3. A board of county commissioners may, in its discretion, allow a physician or surgeon, duly designated to make and making, a post mortem examination or autopsy under Section 2495, G. C., such sums as may be found to be reasonable for the services rendered; and in such case Section 2856-3 has no application."

In the opinion it was said as follows :

"Section 2856 expressly provides that no autopsy shall be had unless authorized by the prosecuting attorney of the county, meaning the prosecuting attorney of the county wherein the dead body is found, and Section 2856-3 limits the fees of the coroners for the performance of such service to the amounts therein prescribed.

Section 2495, General Code, which was not repealed or amended by the foregoing act, provides :

'The county commissioners may allow a physician or surgeon making a post mortem examination at the instance of the coroner or other officer such compensation as they deem proper.'

Whether or not by virtue of Section 2856 the prosecuting attorney of the county, or any 'other officer' may lawfully designate a physician or surgeon other than the coroner to make a post mortem examination or autopsy, or whether the coroner has the exclusive right to either perform such service or himself designate a physician or surgeon other than himself to perform such services, is not decided.

From a consideration of all the statutes herein referred to, it is my opinion that no person may be compensated for holding an autopsy unless the same be authorized by the prosecuting attorney; but if so authorized, a physician or surgeon, who has been duly designated to perform the service in lieu of its being performed by the coroner, may be compensated therefor by the allowance of the board of county commissioners (Board of County Commissioners vs. Hammond, 22 C. C. (N. S.) 319) acting pursuant to Section 2460, G. C., and said board of county commissioners is not bound by the amount specified in Section 2856-3 in making such allowance. The board may allow such amount as it may determine to be just or refuse to allow any amount. However, not more than one fee should be allowed in any case; that is, if the coroner acts under Section 2856, there is no authority to designate a physician or surgeon to act under Section 2495.

I am therefore of the opinion that in no county may fees be allowed to any person for conducting a post mortem examination or autopsy without authorization by the prosecuting attorney of the county in which the dead body is found, and if a physician or surgeon other than the coroner be designated under the provisions of Section 2495, General Code, by the proper officer, the board of county commissioners may, in its discretion,

allow a reasonable amount for the performance of such service and the provisions of Section 2856-3 do not in such instance prescribe a limitation in amount binding upon the board of county commissioners."

Section 2495, General Code, which reads:

"The county commissioners may allow a physician or surgeon making a post mortem examination at the instance of the coroner or other officer such compensation as they deem proper",

still contains the provision authorizing the payment for services of a physician or surgeon in the performance of autopsies at the *instance of the coroner*; although in this connection your attention is directed to the fact that Section 2856, General Code, was amended since Section 2495 was enacted, as found in 109 O. L. 543, by adding the last sentence in Section 2856, which in my opinion limits the provisions contained in Section 2495 which authorized an autopsy to be performed at the instance of the coroner, by now requiring authorization therefor by the prosecuting attorney.

Answering your question specifically, I am of the opinion that where the prosecuting attorney authorized an autopsy and a physician or surgeon other than the coroner performed such autopsy on a dead body found in the county, the board of county commissioners may, under Section 2495, General Code, in its discretion allow the physician such a sum as it deems reasonable for the services so performed.

Respectfully,
EDWARD C. TURNER,
Attorney General.

946.

COUNTY COMMISSIONER—VACANCY IN OFFICE—STATUS OF APPOINTEE.

SYLLABUS:

1. *Under Section 2397, General Code, when a vacancy occurs in the office of county commissioner more than thirty days before the next election for state and county officers, a successor must be elected at said election to serve for the unexpired term of the commissioner who was elected to the office.*
2. *Where a county commissioner is appointed to fill a vacancy by the probate judge, auditor and recorder of the county as provided in Section 2397, General Code, such appointee may only serve until his successor is elected and qualified and the fact that the commission of the Governor states that the appointment is for the unexpired term does not effect a change in the law.*

COLUMBUS, OHIO, September 3, 1927.

HON. OTHO L. MCKINNEY, *Prosecuting Attorney, Springfield, Ohio.*

DEAR SIR:—Receipt is acknowledged of your recent communication which reads as follows: