

Section 4219 to which you refer, specifically requires the council of the village to fix the compensation of all officers, clerks and employes in the village government.

It is a general rule, universally recognized, that funds may not be drawn from the public treasury except in pursuance to the provisions of law. Therefore, it must follow that the only manner in which employes or officers of a village may be legally paid for their services rendered to the village is by council fixing the compensation of such officers or employes, in pursuance to the provisions of the statute. There would appear to be no reason why this would not apply to volunteer firemen. Section 4390, to which you refer, expressly authorizes council to fix such compensation, and therefore it would seem that the general provisions of section 4219 would be applicable, in the absence of section 4390. However, section 4390 specifically requires the same thing as to firemen as is required of section 4319 generally.

In view of the foregoing, you are advised that compensation received by firemen or volunteer firemen should be fixed by council, and the statutes do not contemplate council awarding a lump sum to the members of the fire department, which is in turn distributed to the members thereof.

Respectfully,
C. C. CRABBE,
Attorney General.

2717.

PRISONERS CONFINED IN JAILS OF OHIO FOR FAILURE TO PAY FINE AND COSTS ARE ENTITLED TO ALLOWANCE OF ONE DOLLAR AND FIFTY CENTS PER DAY.

SYLLABUS:

Prisoners now confined in the jails of Ohio, serving out fines, are entitled to the allowance of one dollar and a half per day provided by the amendment to section 13717, General Code, after such act went into effect June 12, 1925,

COLUMBUS, OHIO, Aug. 17, 1925.

HON. L. E. HARVEY, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR:—On July 2nd I received a request from you for an opinion, as follows:

“Where a prisoner was committed to jail prior to June 13, 1925, in default of a payment of a fine and ordered to remain imprisoned until the fine and costs are paid at the rate of sixty cents per day, does section 13717 as amended, effective June 13, 1925, provide that such prisoner shall receive credit at that rate of \$1.50 per day on and after June 13, 1925?”

“Does a prisoner who was sent to jail for failure to pay a fine on June 10, 1925, receive credit at the rate of sixty cents per day or at the rate of \$1.50 per day after June 13, 1925?”

“I would appreciate receiving a prompt reply in regard to these questions, for the reason that if this law as amended applies to prisoners who were committed to jail prior to June 13, 1925, for failure to pay their fine and who are still confined, are entitled to a credit of \$1.50 per day on and

after June 13, 1925, a number we now have confined in jail should soon be released, but if it does not apply to them, then they will have considerable longer time to serve."

Section 13717, General Code, as amended March 4, 1925, reads as follows:

"When a fine is the whole or a part of a sentence, the court or magistrate may order that the person sentenced remain imprisoned in jail until such fine and costs are paid, are secured to be paid, or he is otherwise legally discharged, provided that the person so imprisoned shall receive credit upon such fine and costs at the rate of one dollar and a half per day for each day's imprisonment."

The per diem allowance for prisoners confined in jails for non-payment of fines was increased, by this amendment, from sixty cents a day to one dollar and fifty cents a day. Black on interpretation of laws, p. 359, lays down the following rule of construction of statutes:

"Where an amendment is made by declaring that the original statute 'shall be amended so as to read as follows,' retaining part of the original statute and incorporating therein new provisions, the effect is not to repeal, and then re-enact, the part retained, but such part remains in force as from the time of the original enactment, while the new provisions become operative at the time the amendatory act goes into effect, and all such portions of the original statute as are omitted from the amendatory act are abrogated thereby and are thereafter no part of the statute."

This amendment is for the benefit of the prisoner and is not, therefore retroactive.

Black on interpretation of laws, page 357, No. 1, reads:

"An amended statute is to be construed as if it had read from the beginning as it does with the amendment added to it or incorporated in it."

It was not part of the sentence of the court that he be allowed the sum of sixty cents a day, but was a statutory right belonging to him. The sixty cents per day provision, under the above rule, is completely taken from the law by the amendment and the prisoner is entitled to the benefit of the change in the allowance immediately upon the taking effect of the amendment increasing such allowance.

Therefore, prisoners in jail when such act took effect had the allowance on their fines immediately increased to one dollar and a half per day.

Respectfully,

C. C. CRABBE,

Attorney General.