

## OPINION NO. 997

**Syllabus:**

The maximum of three hundred dollars and expenses for compensation of counsel assigned under Section 2941.51, Revised Code, in felony cases, other than murder cases, is the total compensation that may be allowed regardless of the number of lawyers assigned as counsel in a case.

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**To: James H. DeWeese, Miami County Pros. Atty., Troy, Ohio**  
**By: William B. Saxbe, Attorney General, April 17, 1964**

Your request for my opinion reads as follows:

"A matter has arisen which requires an interpretation of the provisions of R. C. 2941.50 and 2941.51, which provides for appointment and payment of attorneys for indigent defendants in criminal cases. The question is whether, in a case where two attorneys are appointed to represent a lone defendant in a case other than first or second degree murder and/or manslaughter, the limitation of \$300.00 applies to each case or to each attorney. In other words, can each attorney be paid an amount not exceeding the sum of \$300.00 or must they share a total fee not exceeding the sum of \$300.00?

"Our county auditor believes that there is some question about these statutory provisions, and has asked for an opinion regarding them. Since this is a matter which affects not only Miami County but also all the other counties in Ohio, I am passing the request to your office. The office of the State Auditor would also be interested in this matter in connection with the matter of reimbursement to the counties for costs in cases wherein the defendants are sentenced and committed to state institutions. I have discussed this matter with the office of the State Auditor and have been advised that they have followed the practice of approving for reimbursement only a total sum of \$300.00 for attorney fees in each case of this type, regardless of what amount may have been paid by the county to each attorney where more than one attorney has been appointed for a lone defendant.

"It will be appreciated if this request could be taken out of turn so that our county auditor can act as soon as possible on the certification for payment,

and thus possibly avoid any legal action being taken against him to enforce payment."

Section 2941.51, Revised Code, provides in pertinent part as follows:

"Counsel assigned in a case of felony under section 2941.50 of the Revised Code shall be paid for their services by the county, and shall receive therefore:

"(A) In a case of murder in the first or second degree, such compensation and expenses as the trial court may approve.

"(B) In other cases of felony, such compensation as the trial court may approve, not exceeding three hundred dollars and expenses as the trial court may approve.

"\* \* \* \* \*"

The answer to the question you raise must be resolved from a construction of these provisions.

The particular language which gives rise to your inquiry is ambiguous. The term "counsel" used in the sense of a legal adviser or lawyer (as it is used in Section 2941.51, Revised Code) can be either singular or plural in construction. I am persuaded that as used in this section it is intended to include the plural as well as the singular, for it is provided "Counsel \*\*\* for their services \*\*\* shall receive \*\*\* not exceeding three hundred dollars and expenses \*\*\*." I am further, and accordingly, persuaded that three hundred dollars and expenses is the maximum amount that may be paid for counsel in a felony case, other than murder, irrespective of the number of lawyers assigned as counsel under Section 2941.51, supra.

My conclusion is strengthened by the fact that the legislative history of this statute makes it clear that the entire trend of this legislation is to control and limit the compensation paid as fees for defending indigent prisoners. Opinion No. 3104, Opinions of the Attorney General for 1924. Having this in mind it is logical to conclude that the legislature intended to place a maximum on the fee for each case, rather than on the fee of each attorney. The contrary conclusion would mean that costs could easily be pyramided by the assignment of additional lawyers.

In specific answer to your question, therefore, it is my opinion and you are advised that the maximum of three hundred dollars and expenses for compensation of counsel assigned under Section 2941.51, Revised Code, in felony cases, other than murder cases, is the total compensation that may be allowed regardless of the number of lawyers assigned as counsel in a case.