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SHERIFF, INCREASED COSTS, FEES, MILEAGE RATE—INCREASED SHERIFF'S COSTS NOT APPLICABLE TO SUITS FILED BEFORE EFFECTIVE DATE—INCREASED FEES FOR CERTIFICATION OF RECORDS BY SHERIFF AND MILEAGE RATES FOR SHERIFF, MARSHALS, POLICE OFFICERS, APPLICABLE SUBSEQUENT TO EFFECTIVE DATE—AM. H.B. 9, 103RD GENERAL ASSEMBLY — §§1.20, 311.10, 311.12, 311.17, 2941.44, 2949.17, R.C.

SYLLABUS:

1. Pursuant to the provisions of Section 1.20, Revised Code, in cases in the court of common pleas which have been filed before July 17, 1959, and which are terminated after such date, the sheriff shall enter costs on his records and render such statements for costs for all services in said cases at the rates which were applicable under Sections 311.10 and 311.17, Revised Code, at the time such cases were filed, and not at the rates applicable under Sections 311.10 and 311.17, Revised Code, as amended by Amended House Bill No. 9 of the 103rd General Assembly.

2. The provisions of Section 1.20, Revised Code, are not applicable to Sections 311.12, 2941.44, and 2949.17, Revised Code; therefore, the fee provided for certification of records, by sheriffs, in section 311.12, Revised Code, and the mileage rate for sheriffs, deputy sheriffs, marshals, deputy marshals, watchmen, police officers, and coroners mentioned in Section 2941.44, Revised Code, and for guards mentioned in Section 2949.17, Revised Code, are governed by the rates provided in such sections as amended by Amended House Bill No. 9 of the 103rd General Assembly, effective July 17, 1959, as to all such certifications and trips made on or after that date.

Columbus, Ohio, July 21, 1959

Hon. James A. Rhodes, Auditor of State
Columbus 16, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“Will you please render to this office your immediate opinion with respect to the fees to be charged by the Sheriffs in the several counties of the State of Ohio, under the provisions of Amended House Bill No. 9, effective July 17, 1959?”

“The immediate question is:

“Will the same principle or rule stated in your Opinion No. 692 dated July 14, 1959, for the Clerks of Court of Common

Pleas, be applicable to the amended fees for the Sheriffs, which such fees are included in the same amended Act?

“It appears that in the rush to obtain clarification of the involved ‘Fee Bill’, the Sheriffs have been overlooked. We know, through experience that the question here presented will inevitably arise and we would very much appreciate being able to give the correct answers.”

There are five sections of the Revised Code pertaining to duties and functions of sheriffs which were amended by Amended House Bill No. 9 of the 103rd General Assembly and became effective on July 17, 1959, namely Sections 311.10, 311.12, 311.17, 2941.44, and 2949.17.

Section 311.10, Revised Code, deals with the keeping of a foreign execution docket by the sheriff of each county and provides, as amended, for an increase of entries in such docket from ten to twenty-five cents in each case.

Under the provisions of Section 311.12, Revised Code, as amended, the fee for the search and inspection of the books of the sheriff has been abolished and the amount charged therefor merged with the fee to be charged for each certification or copy of any entry, such merged fee being fixed at twenty-five cents.

Section 311.17, Revised Code, provides for the payment of fees for the services of the sheriff, as amended, to be taxed, by the court or clerk thereof, in the bill of costs against the judgment debtor or those legally responsible therefor.

Section 2941.44, Revised Code, provides for increase of mileage to be paid sheriffs, deputy sheriffs, marshals, deputy marshals, watchmen, police officers, and coroners for travel to and from the penitentiary in connection with the apprehension and return of escaped convicts. A like increase of mileage is provided for in Section 2949.17, Revised Code, for special guards, which a court may authorize, in connection with the taking of an escaped convict, by a sheriff, to the penitentiary.

The fees provided for in Sections 311.10 and 311.17, Revised Code, apparently constitute a part of costs in a proceeding within the meaning of Section 1.20, Revised Code, which reads:

“When a statute is repealed or amended, such repeal or amendment does not affect pending actions, prosecutions, or proceedings, civil or criminal. When the repeal or amendment re-

lates to the remedy, it does not affect pending actions, prosecutions, or proceedings, unless so expressed, nor does any repeal or amendment affect causes of such action, prosecution, or proceeding, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act.”

It is clear, therefore, that the law and the reasoning of my recent Opinion No. 692, Opinions of the Attorney General for 1959, which you mention in your letter, also applies to Sections 311.10 and 311.17, Revised Code. In other words, in all cases pending on July 17, 1959 and terminating after that date, sheriffs shall charge and collect the fees which were applicable under these sections at the time such cases were filed, and not the fees provided for in the Amended House Bill No. 9 of the 103rd General Assembly.

An apparently different situation exists with regard to Section 311.12, Revised Code. Issuance of certified copies of entries in the books of a sheriff is a special service of which any citizen may avail himself; it is entirely separate and distinct from proceedings in the court. It follows that Section 1.20, *supra*, is not applicable, and therefore, the fee for such certifications, as amended in Amended House Bill No. 9, became effective on July 17, 1959 and should be charged and collected accordingly.

It is self-evident, of course, that Sections 2941.44 and 2949.17, Revised Code, deal with a situation in which the applicability of Section 1.20, *supra*, is totally out of question. Increased mileage for sheriffs and other officers mentioned in said section, became effective on July 17, 1959, as provided in Amended House Bill No. 9.

Summarizing the foregoing, it is my opinion and I advise you:

1. Pursuant to the provisions of Section 1.20, Revised Code, in cases in the court of common pleas which have been filed before July 17, 1959, and which are terminated after such date, the sheriff shall enter costs on his record and render such statements for costs for all services in said cases at the rates which are applicable under Sections 311.10 and 311.17, Revised Code, at the time such cases were filed, and not at the rates applicable under Sections 311.10 and 311.17, Revised Code, as amended by Amended House Bill No. 9 of the 103rd General Assembly.

2. The provisions of Section 1.20, Revised Code, and not applicable to Sections 311.12, 2941.44, and 2949.17, Revised Code; therefore, the fee provided for certification of records, by sheriffs, in Section 311.12,

Revised Code, and the mileage rate for sheriffs, deputy sheriffs, marshals, deputy marshals, watchmen, police officers, and coroners mentioned in Section 2941.44, Revised Code, and for guards mentioned in Section 2949.17, Revised Code, are governed by the rates provided in such sections as amended by Amended House Bill No. 9 of the 103rd General Assembly, effective July 17, 1959, as to all such certifications and trips made on or after that date.

Respectfully,

MARK McELROY

Attorney General