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PSYCHIATRISTS—APPOINTED BY COURT AT REQUEST OF  
DEFENDANT—DEFENSE IS INSANITY—COUNTY MUST PAY  
COMPENSATION OF PSYCHIATRISTS.

SYLLABUS:

When the court appoints psychiatrists at the request of the defendant in a case in which the defense is insanity, the county must pay the compensation of such psychiatrists.

Columbus, Ohio, February 14, 1950

Hon. Gordon B. Gray, Prosecuting Attorney  
Athens County, Athens, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Recently a first degree murder case was tried in this county. The verdict of the jury was guilty. The defendant interposed two defenses, not guilty and not guilty by reason of insanity. As a result of this plea and upon the specific request of the attorney for the defendant, three psychiatrists were appointed by the court who testified in the case. The defendant has property sufficient to cover the costs in the case.

“The question now arises as to whether the defendant should be charged with the fees of the psychiatrists who were appointed at his instance and request.”

Section 13441-4, General Code, reads as follows:

“In any case in which insanity is set up as a defense, or in which present insanity of the accused is under investigation by the court or jury, the court shall have power to commit the defendant to a local insane hospital, or the Lima State Hospital, where the defendant shall remain under observation for such time as the court may direct not exceeding one month; and the court may in such case appoint one or more disinterested qualified physicians, specialists in mental diseases (but not to exceed three), to investigate and examine into the mental condition of the defendant and testify as experts at his trial or other hearing. In case of such appointment the court shall forthwith notify counsel of the names and addresses of the persons so appointed. The expert witnesses appointed by the court may be called by the court and shall be subject to examination and cross-examination by the prosecuting attorney and counsel for the defendant. The appointment of such expert witnesses, and their testifying as

witnesses, shall not preclude the prosecuting attorney or defendant from calling other witnesses to testify on the subject of insanity. Such persons so appointed may be required by the court to prepare a written statement under oath, concerning the mental condition of the defendant, and file the same in the case, but such report shall not be read as evidence except that it may be used by either counsel on the cross-examination of the witness who signed the same. The court shall instruct the jury in case of such appointment and testimony of such expert witnesses, that the credibility of such witnesses in common with all other witnesses in the case is for the exclusive consideration and determination of the jury. Such persons so appointed shall be paid a reasonable fee for their examination or service, and their reasonable expenses, the amount whereof shall be certified by the judge or court making the appointment, and *paid by the county.*"  
(Emphasis added.)

From this, it can be seen that the court may appoint specialists in mental diseases to examine the defendant. It is inherent in the statute that the defendant has the right to request these appointments and if the court complies, the county must pay for such services. It is apparent, of course, that the defendant could use a psychiatrist as his own witness and in that case the defendant would be obligated to pay him. From your request, however, that was not the situation in this case.

In conclusion, therefore, it is my opinion that when the court appoints psychiatrists at the request of the defendant in a case in which the defense is insanity, the county must pay the compensation of such psychiatrists.

Respectfully,

HERBERT S. DUFFY,

Attorney General.