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COUNTY FEE BILL — INCREASED COURT COSTS NOT APPLICABLE TO SUITS FILED BEFORE EFFECTIVE DATE— INCREASED FEES APPLICABLE TO REAL AND PERSONAL PROPERTY TAXES TO BE SETTLED SUBSEQUENT TO EFFECTIVE DATE—INCREASED FEES APPLICABLE TO INHERITANCE TAX SETTLEMENTS SUBSEQUENT TO EFFECTIVE DATE—AM. H. B. 9, 103RD GENERAL ASSEMBLY.

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 clerk shall enter costs on his record and render such statements for costs for all services in said cases at the rates which were applicable under Section 2303.20, Revised Code, at the time such cases were filed, and not at the rates applicable under Section 2303.20, Revised Code, as amended by Amended House Bill No. 9 of the 103rd General Assembly. (Opinion No. 2270, Opinions of the Attorney General for 1947, overruled.)

2. The county treasurer and the county auditor will be entitled to the increased percentage fees specified in Sections 319.54 (A) and 321.26, Revised Code, as amended by Amended House Bill No. 9 of the 103rd General Assembly, with regard to the last half of 1958 real property and the last half of 1959 personal property taxes, on which settlements will occur subsequent to July 17, 1959.

3. The county treasurer and the county auditor will be entitled to the increased percentage fees specified in Sections 319.54 (C) and 321.27, Revised Code, as amended by Amended House Bill No. 9 of the 103rd General Assembly, with regard to the semiannual settlement of inheritance taxes occurring in September, 1959.

Columbus, Ohio, July 14, 1959

Hon. John T. Corrigan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir :

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

"The recently enacted Amended House Bill No. 9, relative to fees charged for services rendered by county officers, has occasioned a number of problems for some of the Cuyahoga County officials referred to in the Act. In view of the fact that the solutions to these problems have statewide application, your opinion is requested on the matters set forth below.

I. *Clerk of Courts.*

"In the custody of the clerk of courts are some 13,000 pending cases in which court costs have not been billed. In each of these cases accrued costs have been duly noted by the clerk as each occasion arose. Each cost notation has been made at the rate which has been allowed by law during the pendency of these cases. It is the practice of the clerk to bill a party or parties for costs at the time of disposition of the case or subsequent to such disposition.

"Now Section 2303.20 of the Revised Code, as amended by Amended House Bill No. 9 will place in effect, on July 17, 1959 a system of rates for costs which not only increases such costs but is also substantially different from the method which is currently being used by the clerk of the court of common pleas.

"The clerk indicates an apprehension that considerable confusion may ensue in his administration of his cost department if he is required, on and after July 17, 1959, to charge costs at the old rate on all cases which are pending prior to July 17, 1959 and to charge costs at the new rate on all cases which are filed on or after July 17, 1959.

"The question presented, therefore, is :

"As to cases which have been or will be filed prior to July 17, 1959, and terminated on or after the said date, shall the clerk of the court of common pleas enter costs on his records and render statements for costs for all services in said cases at the rates in effect at the time said cases were filed or at the rates applicable under R.C. 2303.20 at the time of disposition of said cases?

II. *Auditor and Treasurer.*

“Revised Code 321.26 and Revised Code 319.54 (A), providing for percentage fees for the county treasurer and county auditor at the time of making real property and personal property tax settlements, have also been amended by Amended House Bill No. 9 to increase said fees. Likewise, R.C. 321.27 and R.C. 319.54 (C) have been amended to increase the fees of the said officials for collecting inheritance taxes.

“The settlements pertaining to the last half 1958 real estate and last half 1959 personal property taxes and the next semi-annual inheritance tax settlement will occur after July 17, 1959, the effective date of the amending Act.

“In view of these facts the questions propounded are:

“(1.) Will the county treasurer and county auditor be entitled to the increased fees specified by Amended House Bill No. 9 in regard to the last half 1958 real estate and last half 1959 personal property taxes, on which the settlements will occur subsequent to July 17, 1959?

“(2.) If the answer to Question No. 1 is negative, will the treasurer and auditor be entitled to the increased fees for the next succeeding settlements, *i.e.* for the first half 1959 real estate and first half 1960 personal property taxes?

“(3.) Will the treasurer and auditor be entitled to the increased fees in regard to the next semiannual settlement of inheritance taxes, *i.e.* the settlement which will occur in September, 1959?

“(4.) If the answer to question No. 3 is negative, must the fees of the first semiannual settlement in 1960 be divided as to rate according to whether or not the tax was paid before July 17, 1959 or thereafter?

“It would be appreciated if an early reply can be supplied to the officials concerned so that the continuity of smooth administration of their offices can be facilitated.”

I note that both branches of your inquiry pertain to fees. It should be made plain, however, that with the exception of the designation they bear, we are dealing with fees of two kinds, relating to entirely different subjects and areas of government. Fees involved in the first branch of your inquiry form an integral part of the judicial process whereby the respective rights and interests of litigants are determined. The second branch of your inquiry, on the other hand, relates to fees established for the administration of various units of the executive branch of the government, and are used, in effect, as an instrument whereby tax moneys are being distributed among such units. The distinction should be kept in

mind in connection with the provisions of Section 1.20, Revised Code, which are, as will be seen, of paramount importance in the solution of both branches of your inquiry.

Addressing myself to the first branch of your inquiry relating to court costs, I find it necessary to explore and discuss several questions of law which appear determinative in the solution of the problem involved. These questions are:

- (1) Are the terms "costs" and "fees", synonymouse with each other?
- (2) Does the legislation under consideration relate to substantive law, or is it remedial?
- (3) What is the law as to "costs" and "fees" generally?
- (4) Are the provisions of Section 1.20, Revised Code, applicable to Section 2303.20, Revised Code?

Section 2303.20, Revised Code, under consideration here, simply states:

"The clerk of the court of common pleas shall charge the following fees and no more. * * *"

Then follow the enumeration of the various services and the specific fees to be charged. It may be noted that Amended House Bill No. 9 left the language of the above introductory paragraph of Section 2303.20, Revised Code, unchanged, while the system of computing fees, as pointed out in your letter, differs from the one in effect at the present time.

In 14 American Jurisprudence, page 4, it is stated:

"The terms 'fees' and 'costs' are sometimes used interchangeably, but accurately speaking *the term 'fees' is applicable to the items chargeable by law between the officer or witnesses and the party whom he serves* while 'costs' has reference to the expenses of litigation as between the parties." (Emphasis added)

There is ample authority in Ohio law for the proposition that statutes relating to costs, in the broader sense of that word, are remedial. See *State ex rel. Michaels v. Morse*, 75 Ohio Law Abs., 536, (affirmed in 165 Ohio St., 599), *Flory v. Cripps*, 132 Ohio St., 487, 491. I have not been able to find an Ohio case in which fees were the subject of controversy and of judicial determination. I do, however, find authoritative support for considering statutes dealing with fees as remedial law in 12 Corpus Juris, where it is stated on page 1084:

“Statutes regulating costs and fees affect generally the remedy, only, and are therefore not unconstitutional as impairing the obligation of prior contract.” (Emphasis added)

The character of the statute directly involved having been made clear, I can now proceed and examine the law generally applicable to the problem at hand. In 15 Corpus Juris, page 23, it is stated:

“Although there is some authority to the contrary, the right to costs and the amount and items taxable are as a general rule governed by the statute in force at the time of the termination of the action, and not those in force at its commencement, as the question of costs is one which is solely of statutory regulation and wholly dependent upon it, and as ‘alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be.’ A party has no vested right to costs at the commencement of the action.” (Emphasis added)

To the same general effect are 14 American Jurisprudence, Costs, Section 4, and 20 Corpus Juris Secundum, Costs, Section 3. It follows, therefore, that if I were to answer your question in the light of the foregoing statement of the law, it would be incumbent upon me to advise you that the clerk of the common pleas court shall charge fees as provided in Amended House Bill No. 9 in all cases terminating on July 17, 1959 and thereafter.

Pursuing the subject further, however, I also find in 15 Corpus Juris, page 24, the following statement.

“Where a statute relating to costs expressly excepts from its operation suits pending at the date it goes into effect, costs in such suits will be governed by the previous statutes relating to costs.” (Emphasis added)

Section 2303.20, Revised Code, as amended by the 103rd General Assembly does not contain such an express exception. In this regard, however, Section 1.20, Revised Code, applying to all repeals and amendments of statutes, 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 relates 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 proceedings,

existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act.” (Emphasis added)

See also *Sawyer v. Bancroft*, 21 Pickering (38 Mass.), 210.

As already pointed out herein, Section 2303.20, Revised Code, is clearly remedial, whereby all doubt is removed as to whether or not it is covered by the provisions of Section 1.20, Revised Code. Further support is found in *Woodward v. Eberly*, 167 Ohio St., 177, where it was held in the first paragraph of the syllabus:

“Section 1.20, Revised Code, operates as a saving clause as to all statutes which amend or repeal prior legislation and makes applicable to pending actions the law as it existed before the amendment or repeal unless otherwise expressly provided in the amending or repealing act.”

I am aware that in Opinion No. 2270, Opinions of the Attorney General for 1947 (page 496), where the identical question was under discussion, a conclusion different from the one indicated here was reached. That conclusion, it appears, was primarily the result of the assumption that statutes dealing with court fees are not remedial, without a detailed discussion of the question. Therefore, in accordance with the authorities cited herein, Opinion No. 2270, Opinions of the Attorney General for 1947, is overruled.

I may also note in this connection that the new system of charging fees provided for in the amended Section 2303.20, Revised Code, namely, the payment of a flat fee of seven dollars and fifty cents for 15 different services instead of a fee for each separate step in the proceeding of a case, should not cause any difficulty in view of what I believe is the correct solution of the problem at hand.

The second branch of your inquiry relates to Sections 321.26, 319.54 (A), 321.27 and 319.54 (C), Revised Code, which have also undergone substantial changes as a result of the enactment of Amended House Bill No. 9, by way of increasing percentage fees for the county treasurer and county auditor at the time of making real property and personal property tax settlements, and by increasing the fees of the same two officials for collecting inheritance taxes at the time settlements are made.

Examining the specific sections of the Revised Code to which reference is made in your letter, I find that Section 319.54 (A) provides for settlement by the county treasurer with the treasurer and auditor of state regarding all moneys collected on any tax duplicate of the county other than inheritance duplicate and on all moneys received as advance payments of personal property and classified property taxes. Subsection (C) of the same section deals with settlement by the county auditor with the auditor of state with regard to moneys collected by the county treasurer as inheritance tax. Sections 321.26, Revised Code, covers settlement of the county treasurer with the county auditor regarding all moneys collected by the treasurer as provided in Section 319.54 (A), and Section 321.27, Revised Code, provides for settlement by the county treasurer with the county auditor with regard to moneys collected by him under the provisions of Section 319.54 (C), Revised Code.

A "settlement" has been defined as a contract between two parties by means of which they ascertain the state of the accounts between them and strike a balance. *Jacobson v. Ely*, 57 Ohio St., 450, 457. The determination of the percentage fees obviously involves nothing more than a computation of amounts due each state and county officer in accordance with the formula fixed by the General Assembly. A simple, definite duty, with respect to which nothing is left to discretion is to be performed as the law directs; in other words, what we have is a ministerial act and not a proceeding, or an act constituting a part of a proceeding within the meaning of Section 1.20, Revised Code. In 38 Ohio Jurisprudence, Taxation Section, 334, it is stated on page 1143:

"The legislature has full authority to regulate the distribution of taxes, since the constitutional requirement of uniformity in taxation applies only to the levy and assessment of taxes and not to the expenditure and distribution of money raised by them." (Emphasis added)

Substantially in point with the question under discussion appears to be *Cleveland v. Zangerle*, 127 Ohio St., 91, where the dispute was as to proper distribution of tax moneys under intangible tax law, after such was amended, between a municipal corporation on one hand and a county auditor, a county treasurer, and trustees of a public library on the other. On pages 92 and 93 the court stated:

"No governmental subdivision of the state has any vested right, at least until distribution is made, in any taxes levied and in the process of collection. Until such distribution is made the

Legislature of Ohio is fully competent to divert proceeds among those local subdivisions as it deems best to meet the emergencies which it finds to exist. So far as any governmental subdivision of the state is concerned here can be no vested right, although a case might arise where private interests might intervene and be so affected as to give rise to a vested interest. The provisions of Am. Sub. Senate Bill No. 239, so far as they relate to the future distribution of the proceeds of the taxes, are not retrospective but prospective, in character, and are not violative of Section 28 of Article II of the Constitution; nor can it be said that the city had any contractual obligation with the state which was impaired by the passage of Am. Sub. Senate Bill No. 239."

Accordingly, in specific answer to the questions propounded, omitting those that need not be answered in the light of the conclusions reached, it is my opinion and you are advised:

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 clerk shall enter costs on his record and render statements for costs for all services in said cases at the rates which were applicable under Section 2303.20, Revised Code, at the time such cases were filed, and not at the rates applicable under Section 2303.20, Revised Code, as amended by Amended House Bill No. 9 of the 103rd General Assembly. (Opinion No. 2270, Opinions of the Attorney General for 1947, overruled.)

2. The county treasurer and the county auditor will be entitled to the increased percentage fees specified in Sections 319.54 (A) and 321.26, Revised Code, as amended by Amended House Bill No. 9 of the 103rd General Assembly, with regard to the last half of 1958 real property and the last half of 1959 personal property taxes, on which settlements will occur subsequent to July 17, 1959.

3. The county treasurer and the county auditor will be entitled to the increased percentage fees specified in Sections 319.54 (C) and 321.27, Revised Code, as amended by Amended House Bill No. 9 of the 103rd General Assembly, with regard to the semiannual settlement of inheritance taxes occurring in September 1959.

Respectfully,

MARK McELROY

Attorney General