

1093.

COURT STENOGRAPHER—ANNUAL COMPENSATION FIXED BY COURT
—APPROPRIATION BY COUNTY COMMISSIONERS INSUFFICIENT
—AUDITOR ISSUES MONTHLY INSTALLMENTS UNTIL FUNDS EX-
HAUSTED.

SYLLABUS:

When a court has fixed the annual compensation of a court stenographer, as provided in Section 1550, General Code, at \$1800.00 per year, and the board of county commissioners has appropriated only \$1500.00 for such purpose, it is the duty of the county auditor to issue his warrant on the county treasurer for the payment of such compensation in the amount of \$150.00 per month until such time as the appropriation shall have become exhausted.

COLUMBUS, OHIO, October 23, 1929.

HON. R. D. WILLIAMS, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your letter of recent date which is as follows:

“The Common Pleas Court of Athens County, Ohio, duly appointed a court stenographer and fixed the compensation under the provisions of Section 1550 of the General Code of Ohio, at one hundred fifty dollars per month or in the aggregate eighteen hundred dollars a year. The county commissioners appropriated fifteen hundred dollars for the salary of said stenographer. The auditor of said county refuses to issue a warrant for the sum fixed by the Common Pleas Judge as monthly salary for the said court stenographer. Can the auditor legally so refuse to issue his warrant in the sum of one hundred fifty dollars when he has an appropriation of fifteen hundred dollars for the year? Or would it be legally possible for him to issue a warrant for one hundred fifty dollars per month until such time as the appropriation of fifteen hundred dollars for the year shall have become exhausted?”

Section 1550, General Code, to which you refer, is as follows:

“Each such shorthand reporter shall receive such compensation as the court making the appointment shall fix, not exceeding three thousand dollars each year in counties where two or more judges of the Common Pleas Court hold court regularly, and in all other counties not more than two thousand dollars. Such compensation shall be in place of all per diem compensation in such courts. Provided, however, that in case such appointment shall be for a term of less than one year, such court may allow a per diem compensation not exceeding the sum of fifteen dollars per day, for each day such shorthand reporter shall be actually engaged in taking testimony or performing other duties under the orders of such court, which allowance shall be in full for all services so rendered.

The auditor of such county shall issue warrants on the treasurer thereof for the payment of such compensation in equal monthly installments, when the compensation is allowed annually, and when in case of services per diem, for the amount of the bill approved by the court, from the general fund upon the presentation of a certified copy of the journal entry of appointment and compensation of such shorthand reporters.”

Section 1546, General Code, authorizes the Court of Common Pleas to appoint a stenographic reporter as official shorthand reporter of such court for a term of years not exceeding three. Under the provisions of Section 1550, supra, when such appointment is made for a term of years, the court shall fix the salary of such shorthand reporter upon an annual basis. While your letter refers to such salary as one hundred fifty dollars per month, I assume that the court has followed the provisions of Section 1550 and fixed this salary as eighteen hundred dollars for the year. Pursuant thereto, the county commissioners have appropriated fifteen hundred dollars for the year for such purpose which appropriation was, undoubtedly, made pursuant to Section 5625-29, General Code, 112 O. L., 404, being part of the Budget Law. Under the provisions of Section 1550, supra, the auditor is required to issue warrants on the treasurer for the payment of the compensation of shorthand reporters in equal monthly installments when the compensation is allowed annually. The warrant referred to must be drawn against an appropriate fund which shall show on its face the appropriation in pursuance of which such expenditure is made and the fund against which the warrant is drawn. Section 5625-33, paragraph c, expressly provides that no subdivision or taxing unit shall make any expenditures of money except by proper warrant so drawn.

The questions submitted resolve themselves into a determination of whether the county auditor is to follow the order of the court and issue warrants in accordance therewith in the amount of one hundred and fifty dollars per month as long as the appropriation may last, notwithstanding the fact that only fifteen hundred dollars have been appropriated for the whole year, or whether the county auditor is to issue his warrant each month in the amount of one hundred and twenty-five dollars.

A somewhat similar question of statutory construction was considered by my predecessor in an opinion found in Opinions of the Attorney General, 1927, Vol. IV, page 2564. This opinion considered the matter of compensation to be paid counsel appointed to assist the prosecuting attorney, under the provisions of Section 13562, which are to the effect that the court may appoint an attorney to assist the prosecuting attorney and the county commissioners shall pay such assistant, compensation as the court "approves". In this opinion, there was also considered the matter of compensation paid by the county to an attorney appointed by the court to defend indigent prisoners under Section 13618, which provides that such counsel may receive compensation as the court "approves". In the opinion, the case of *Long vs. Commissioners*, 75 O. S., 539, was discussed, and the conclusions of my predecessor were as set forth in the syllabus, which is as follows:

"1. A Court of Common Pleas may appoint counsel to assist the prosecuting attorney, under and by virtue of Section 13562, General Code, without first consulting the board of county commissioners as to whether or not any appropriation previously has been made for compensating such appointee. The allowance of such appointee's compensation, and the fixing of the amount thereof, rests entirely in the discretion of the county commissioners; and the same can not be paid unless an appropriation has been made therefor.

2. Under the provisions of Section 13618, General Code, the amount of compensation to be paid by the county to an attorney under appointment by the trial court for the purpose of defending an indigent prisoner, is such sum or sums as the commissioners of said county, in the exercise of their discretion may allow, subject to the limitations set out in said section.

3. County commissioners, by virtue of the authority vested in them to fix the amount of appropriations, as provided for in Sections 5625-29, et seq., General Code, have it within their power to regulate the aggregate amount to be expended by the prosecuting attorney, in any one year, of the allowance

made to him under the authority of Section 3004-1, General Code. If the court, in fixing an allowance under Section 3004-1, General Code, fixes it in excess of the amount appropriated, and the county commissioners do not within the fiscal year amend their appropriation so as to include the amount of such allowance, then, such an allowance is ineffective, and the court is without power to require the commissioners to appropriate moneys to cover same."

I am of the view that the county commissioners undoubtedly have it within their power to regulate the aggregate amount to be expended during any fiscal year as compensation of court stenographers, and accordingly in the case here, if the commissioners fail to make any additional appropriation the allowance fixed by the court must become, in part at least, ineffective. This conclusion, however, throws no light upon how the amount that is appropriated is to be paid.

In another opinion of this department, found in Opinions of Attorney General, 1927, Vol. I, page 267, the syllabus is as follows :

"1. The aggregate amount of compensation that can be paid to any public official or employee, for and during any fiscal year, is limited by the amount appropriated therefor.

2. When an appropriation is made by county commissioners for the yearly compensation of the superintendent and matron of a county children's home which is of a lesser amount than their salaries have theretofore been fixed, it becomes the duty of the trustees of the home to fix the salaries to conform to the appropriation."

At page 271 the following language is used :

"It is my opinion that when salaries are fixed on a yearly basis, no monthly payroll should be approved or paid which shows on its face that it has been calculated on a basis that would in a twelve month period aggregate more than the amount allowed for the entire year. It is evident that if this rule were not followed, and payments were made each month which in the aggregate would amount to more than was allowed for the twelve month period, it would lead to a situation wherein the fund would be exhausted before the end of the yearly period and the incumbent of the position could not be paid anything for the latter part of the year and in the event a vacancy should occur by death, resignation or otherwise in the office or position there would be no money available from the fund by which a person who was appointed to fill the vacancy might be paid."

This opinion, being Opinion No. 156, was rendered on March 8, 1927. On April 13, 1927, the 87th General Assembly passed House Bill No. 80, or what is known as "the budget law". Section 38 of this bill (Section 5625-38, General Code), provides as follows :

"Each political subdivision shall have authority to make expenditures for the payment of current pay rolls upon the authority of a proper appropriation for such purpose provided that the positions of such employees and their compensation have been determined prior thereto by resolution or ordinance or in the manner provided by law. The total expenditures for such purpose during the first half of any fiscal year shall not exceed six-tenths of the appropriation therefor unless the taxing authority of such subdivision

by a three-fourths vote of all members thereof waives such limitation, and in the resolution waiving such limitation there shall be set forth their reason therefor."

In view of this section, I am of the opinion that the reasoning of Opinion No. 156 of March 8, 1927, *supra*, is no longer applicable, as it is contemplated that there may be a departure from the rule therein laid down. I am further of the view that this section is dispositive of the question before me.

Six-tenths of the appropriation of \$1500.00 is \$900.00, or \$150.00 per month for the first six months, the rate fixed by the court. It follows, of course, in the event an additional appropriation is not made before the end of the year, the funds appropriated will be expended at the end of the tenth month. This is a matter for the consideration of the county commissioners, however, and is not in my opinion a matter within the discretion of the auditor.

The duty imposed by Section 1550, *supra*, upon the auditor to issue warrants for the payment of "such compensation" is clearly the compensation as is fixed by the court. The issuance of such warrants within the limitations of Section 5625-38, *supra*, does not in my opinion consist in other than the performance of a purely ministerial duty.

It is accordingly my opinion that when a court has fixed the annual compensation of a court stenographer, as provided in Section 1550, General Code, at \$1800.00 per year, and the board of county commissioners has appropriated only \$1500.00 for such purpose, it is the duty of the county auditor to issue his warrant on the county treasurer for the payment of such compensation in the amount of \$150.00 per month until such time as the appropriation shall have become exhausted.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1094.

COUNTY COMMISSIONERS—UNAUTHORIZED TO CO-OPERATE WITH
HIGHWAY DEPARTMENT IN CONSTRUCTING BRIDGE OUTSIDE
MUNICIPALITY PRIOR TO JULY 25, 1929.

SYLLABUS:

Under the provisions of Section 1191, General Code, as in force and effect prior to amendment by the 88th General Assembly, the county commissioners of any county, irrespective of the tax duplicate thereof, had no authority to co-operate with the Department of Highways in the construction or reconstruction of bridges and viaducts outside of the corporate limits of municipal corporations.

COLUMBUS, OHIO, October 23, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"We are in receipt of a communication from County Surveyor George Montgomery, Youngstown, Ohio, reading as follows:

'In Re Akron-Youngstown Road, S. H. No. 18, Section "P".