

4696.

JURY—JURY COMMISSIONERS NOT ENTITLED TO TRAVELING EXPENSES WHEN.

SYLLABUS:

There is no authority to pay Jury Commissioners' traveling expenses where such expenses were incurred in visiting and questioning prospective jurors as to their qualifications for Jury service.

COLUMBUS, OHIO, September 21, 1935.

HON. CLIFTON L. CARYL, *Prosecuting Attorney, Marysville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“The Board of County Commissioners of this county have referred to me an auditor’s warrant signed by the Jury Commission of this county wherein said Jury Commission have presented a bill and are requesting pay for mileage of automobile used in the investigation of prospective jurors for jury duty.

The persons composing the Jury Commission used one of their cars for the purpose of contacting various persons in order that they might determine their qualifications to serve as prospective jurors for the next term of court, and your opinion as to whether or not this bill for mileage may be legally paid or not will be greatly appreciated.”

The new Jury Code, Sections 11419-1 et seq. General Code (114 O. L. 193) was enacted in 1931. It provides a comprehensive system for the selecting of both grand and petit jurors.

Relative to the compensation of the Jury Commissioners, who are appointed by the Common Pleas Judges of each County, Section 11419-4, General Code, provides:

“The commissioners shall receive a salary or compensation fixed by the said judge or judges payable monthly out of the county treasury. They may appoint and remove, with the consent of said judge or judges, expressed in writing, as many deputy commissioners as they deem necessary to carry out the intent and purpose of this act. The deputy commissioners shall receive a salary or compensation fixed and paid in like manner as the commissioners. Such salaries or compensations may at any time be changed by the said judge or judges. The

commissioners may, with the consent of said judge or judges expressed in writing, from time to time appoint such clerks and messengers as shall be necessary for the proper execution of this act. The compensation of such clerks and messengers shall be fixed by the said judge or judges and paid by the county monthly. All appointments made under this section shall be filed in the office of the clerk of the court of common pleas and entered on the journal of the court. All such appointments of deputies, clerks and messengers shall be made on the basis of ascertained merit and fitness alone, in accordance with rules prescribed by the said judge or judges."

Sections 11419-8 and 11419-9, General Code, relate to the selection of jurors by the Jury Commissioners. These sections read as follows:

Sec. 11419-8:

"On or before the last day of December, 1931, and biennially thereafter, unless otherwise ordered by the judge or judges of the common pleas court of such county, the board of elections for each county shall make and file with the commissioners of jurors a certified list containing the names and addresses of all the electors of the county shown on the poll-books for the next preceding general election."

Sec. 11419-9:

"The commissioners shall, on or before the first Monday in August, 1932, from the said list of electors furnished as hereinbefore provided, unless otherwise ordered by the common pleas judge or judges of the county, compile a list of as many names as the court shall designate in an order made for that purpose, of judicious and discreet persons having the qualifications of electors of such county, to be selected as nearly as may be from the several precincts, districts and townships in proportion to their respective population. No person shall be so selected who shall not, in the judgment of such commissioners, be competent in every respect to serve as a juror. The said list shall constitute the annual jury list for the jury year beginning August 1, 1932. Such list shall be prepared and filed, and ballots therefrom shall be prepared and deposited in the jury wheel as in the manner hereinafter prescribed by this act. Provided further that in the selection of the names for said compiled list from the said list of electors, unless otherwise ordered by the common pleas judge or judges of the county, the said commissioners shall proceed to assign a consecutive number to each name upon said list of electors, starting with one, and shall use as herein provided, for the pur-

pose of compiling said list of prospective jurors, a key number which shall be designated by the judge or judges of said county. Said commissioners shall proceed to select from said list of electors the name of each person accordingly as the key number so designated, or the multiples thereof, appear opposite said names on said list, until a sufficient number of such names are selected to make up the required number of prospective jurors. When the said list of prospective jurors shall be thus compiled and the ballots prepared, the clerk of the court of common pleas shall, if ordered by the judge or judges of the county, burn the old ballots deposited prior to the effective date of this act, before placing the new ballots in the jury wheel."

You raise the question of whether or not the County Commissioners may compensate the Jury Commissioners for mileage arising out of the investigation of prospective jurors.

An examination of the entire Jury Code does not disclose where the legislature has specifically provided for the payment of the traveling expenses of Jury Commissioners. The only section which provides in any manner for the compensation of Jury Commissioners is Section 11419-4 General Code, *supra*. Section 11419-38 General Code is particularly pertinent to your inquiry. This section reads as follows:

Sec. 11419-38.

"No officer mentioned in this act shall receive any payment or fees for any service required by this act, except as specified in this act. Any fee for the service of any paper required by the commissioners shall be a charge against the county, and shall be audited and paid in like manner as other charges are now paid. The commissioners are authorized to call upon the sheriff of the county to serve any paper required to be served; and the sheriff shall perform such duty and tax fees therefor as provided for other similar service."

It is well settled that traveling expenses of officers and employes cannot be paid from public funds except in cases where the incurring and payment of such expenses are authorized by statute. *Jones vs. Commissioners*, 57 O. S. 189, also see *Opinions of the Attorney General for 1920*, Vol. 1, p. 411 and *Opinions of the Attorney General for 1933*, Vol. 1, p. 525. It is likewise well settled that services performed for the public where no provision is made by statute for payment are regarded as a gratuity or as being compensated by the fees, privileges and emoluments accruing to such officer in the matters pertaining to his office. *Jones vs. Commissioners*, 57 O. S. 189.

The wisdom against allowing claims of public officers for expenses incurred in the discharge of official duties, except in cases where the incurring

and payment of such expenses are clearly authorized by statute, is most forcibly shown by the fact that the legislature has from time to time, and in a great number of cases, expressly provided for the payment of traveling expenses. This would seem to deny the right to recover traveling expenses in those cases where no provision is made for the payment of the same. The following statutes, selected at random, are cited and referred to for the purpose of showing the legislative policy on this subject over a long period of time: Sections 50, 275, 486-4, 499, 710-9, 1081-4, 1082-3, 1083-5, 1179, 1294, 1335-3, 1981, 2786, 3004, 3087 and 3151, General Code of Ohio.

While it might possibly be advantageous for Jury Commissioners to travel around the county examining prospective jurors, it is apparent from a reading of the entire Jury Code that the legislature did not contemplate that this would be necessary. Broad power to subpoena prospective jurors and examine into their qualifications is given the Jury Commissioners. Section 11419-4, General Code, specifically provides for the compensation of Jury Commissioners. Had the legislature intended the Jury Commissioners to receive their traveling expenses, it would have been an easy matter to have used language appropriate to such an intention, as they have in numerous cases, a few of which are quoted, *supra*.

Without unduly prolonging this discussion, it is my opinion, in specific answer to your inquiry, that there is no authority to pay Jury Commissioners' traveling expenses where such expenses were incurred in visiting and questioning prospective jurors as to their qualifications for Jury service.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4697.

APPROVAL, BONDS OF ROCKY RIVER VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$6,800.00 (1/3 LIMITED).

COLUMBUS, OHIO, September 21, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.