

2571.

FEES--COUNTY AUDITORS--ACTING AS DEPUTY REGISTRARS--MOTOR VEHICLES--FEE SHALL BE PAID INTO COUNTY TREASURY--GENERAL COUNTY FUND --SECTION 2983 G. C.

SYLLABUS:

All fees collected under the provisions of Section 6294, General Code as amended, for services rendered by county auditors while acting in the capacity of deputy registrars, shall be paid by them into the county treasury, to the credit of the general county fund as provided for in Section 2983 of the General Code.

COLUMBUS, OHIO, June 8, 1938.

HON. NORTON C. ROSENRETER, *Prosecuting Attorney, Port Clinton, Ohio.*

DEAR SIR: Acknowledgment is made of your recent communication wherein you request my opinion on the following:

“Referring to General Code, Section 6294 as amended by House Bill No. 429 and filed in the office of the Secretary of State on the 22nd day of April, 1937.

In paragraph three of said Act, as amended it is provided as follows:

* * * Each deputy registrar shall be allowed a fee not to exceed twenty-five cents for each application received by him, which shall be in addition to the license fee and shall be for the purpose of compensating the deputy registrar for his services and the services of such assistants, clerks, stenographers and other employees, office and rental expense, as may be necessary for the proper discharge of his duties under this act required in the receiving of applications and the issuing of licenses. Each application for registration shall be signed and verified by the owner before a person authorized by law to administer oaths and each deputy registrar shall be authorized to administer oaths in the matter of applications for registration and no fee shall be charged for such service. Each statement in any application for registration shall be deemed a material statement in any prosecution for perjury.’

The County Auditor here has pointed out to me that the fee allowance to the Deputy Registrar, in the amended

Act has been increased to twenty-five cents as a maximum charge on each application received by him, whereas the old Act provided for a maximum of but fifteen cents. The former enactment also provided that in the case of the County Auditor the fifteen cent fee was to be paid into the Auditor's fee fund. This latter provision has been omitted from the Act as amended.

The Auditor here and his deputy take care of such registration and a charge of twenty-five cents is made for each application.

Up to this year a charge was made of fifteen cents and all fees so received have been turned over to the General Fund of the County.

In view of the fact that moneys received from the imposition of such fees need not be used for additional help, clerks, stenographers and other employees, and is not needed for office and rental expense, is the County Auditor, as such Deputy Registrar, entitled to such money in his own right?

It is obvious that this confusion only arises where the county auditor is the Deputy Registrar."

Section 6291-1 of the General Code, provides in part as follows:

"The registrar shall designate the county auditor and one or more persons in each county to act as deputy registrars, who shall accept applications for the annual license tax, and assign distinctive numbers in the same manner as the registrar."

It will be specifically noted from the reading of the above quoted provisions that a mandatory duty is imposed upon the Registrar of Motor Vehicles to designate in each county the county auditor as a deputy registrar of Motor Vehicles.

Section 6294 of the General Code, prior to its amendment, provided insofar as material to your question, as follows:

"Each deputy registrar shall be allowed a fee of not to exceed fifteen cents, which shall be in addition to the license tax and shall be for the purpose of paying for the additional help required in the receiving of applications and the issuing of licenses. In the case of the county auditor, such fifteen-cent fee shall be paid into the auditor's fee fund." (Italics mine.)

Since in your request you have quoted, insofar as your particular question is concerned, the pertinent provisions of Section 6294, as amended by House Bill No. 429, effective July 22, 1937, the same will not be requoted but reference only made thereto.

From a comparison of the provisions of Section 6294 of the General Code as the same existed prior to and subsequent to its amendment, it is noted that two changes were made therein which are quite pertinent to the situation here under consideration, namely, that the maximum fee formerly allowed deputy registrars for rendering services relating to license plate registrations was increased from fifteen cents to twenty-five cents, and that the provision "In the case of the county auditor, such fifteen-cent fee shall be paid into the auditor's fee fund," formerly contained in Section 6294, was by this amendment omitted.

If the provisions of Section 6294 of the General Code as amended were to be considered independently of any other provision of law, it is quite obvious that county auditors, acting in the capacity of deputy registrars, are entitled to retain personally any amount remaining in their possession, after the deduction of all necessary expenses of fees collected by them in the dispensing of service relating to license plate registrations.

However, before a definite conclusion can be reached concerning the question here considered, other provisions of law relating to the disposition of fees collected by county officers must first be considered. Section 2983, General Code, provides in part as follows:

"On the first business day of each month, and at the end of his term of office, each of such officers (including county auditors) shall pay into the county treasury, to the credit of the general county fund, on the warrant of the county auditor, *all fees*, costs, penalties, percentages, allowances and perquisites of whatever kind collected by his office during the preceding month or part thereof for official services, * * *." (Parenthesis mine. Italics mine.)

Since by virtue of the mandatory language used in Section 6291-1, supra, an additional duty is imposed upon the county auditor's office relating to license plate registrations, it is quite evident, in my judgment, that the foregoing provisions of Section 2983, supra, are controlling insofar as the disposition of fees received by county auditors for services rendered by them in the receiving of applications and in the issuance of license plates is concerned.

In reaching this conclusion, I am not unmindful of the fact that perhaps it could be persuasively contended that the provisions of Section 6294 as amended, in omitting the provision, "In the case of the county auditor, such fifteen-cent fee shall be paid into the auditor's fee fund," therein formerly contained, indicates an intent of the Legislature that county auditors, for services rendered as deputy registrars, are to retain for such services, the same fee as any other person acting in a like capacity and that, therefore, the provisions of Section 6294 as amended must be held to have been intended by the Legislature to be engrafted upon Section 2983, supra, as an exception thereto. However, in my opinion, the holding of the Supreme Court of Ohio in the case of *The City of Cincinnati, et al. vs. Guckenberg*, 60 O. S. 353, refutes any argument that might be advanced in support of such contention. In this case it was held as is disclosed by the first branch of the syllabus:

"A code of statutes relating to one subject, is presumed to be governed by one spirit and policy, and intended to be consistent and harmonious, and all of the several sections are to be considered in order to arrive at the meaning of any part, unless a contrary intent is clearly manifest."

Obviously, a consideration of the provisions of Section 6294 as amended, does not disclose an intent clearly manifest that the provisions thereof were enacted by the Legislature as an exception to Section 2983, supra. If the Legislature had intended that fees received by county auditors for services rendered while acting in the capacity of deputy registrars, should be personally retained by them after the payment of all necessary expenses, it would, in my judgment, have been an easy matter to have so stated. However, having failed to so provide, I am constrained to the conclusion that all fees received by a county auditor for services rendered in matters relating to license plate registrations, are to be disposed of in the manner provided for by Section 2983, supra.

It is, therefore, my opinion in specific answer to your question that all fees collected under the provisions of Section 6294, General Code, as amended, for services rendered by county auditors while acting in the capacity of deputy registrars, shall be paid by them into the county treasury, to the credit of the general county fund as provided for in Section 2983 of the General Code.

Respectfully,

HERBERT S. DUFFY,

Attorney General.