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## SHORTHAND REPORTER:

1. PREPARATION OF TRANSCRIPTS—ALLOWANCE PROVIDED IN SECTIONS 2301.24, 2301.25 RC IS IN ADDITION TO COMPENSATION ALLOWED UNDER SECTION 2301.22 RC.
2. COMPENSATION FOR PREPARATION OF TRANSCRIPTS OF TESTIMONY OF WITNESSES BEFORE GRAND JURY—ORDERED BY PROSECUTING ATTORNEY—MAY BE PAID UPON CERTIFICATE OF CLERK OF COURTS—CHARGES SHOULD BE AGAINST COUNTY GENERAL FUND—SECTION 2301.24 RC.
3. ITEM OF EXPENSE TO COMPENSATE REPORTERS, INCLUDING FEES ADVANCED UNDER SECTION 2301.25 RC—SHOULD BE INCLUDED IN BUDGET AND APPROPRIATION OF COMMON PLEAS COURT—OMITTED ITEM SHOULD BE INCLUDED IN SUPPLEMENTAL APPROPRIATION FOR COURT.

## SYLLABUS:

1. The allowance provided in Sections 2301.24 and 2301.25, Revised Code, for the preparation of transcripts by shorthand reporter, is in addition to the compensation allowed such reporters under the provisions of Section 2301.22, Revised Code.

2. The compensation of a shorthand reporter for the preparation of transcripts of testimony of witnesses before the grand jury, when ordered by the prosecuting attorney may be paid upon certificate of the Clerk of courts as provided in Section 2301.24, Revised Code; and such payment should be charged against the county general fund.

3. An item for the expense of compensating shorthand reporters, including the fees advanced them under the provisions of Section 2301.25, Revised Code, should be included in the budget and appropriation of the common pleas court, and when such item has been omitted from the original budget and appropriation it should be included in a supplemental appropriation for such court.

Columbus, Ohio, March 26, 1954

Hon. Reeder C. Hutchinson, Prosecuting Attorney  
Defiance County, Defiance, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Defiance County Court of Common Pleas has an official shorthand reporter who is paid an annual salary. Pur-

suant to Revised Code Section 2301.25, at the request of the Prosecuting Attorney, the shorthand reporter made a transcript of testimony before the Grand Jury. The shorthand reporter has submitted a bill based on the rates fixed by the Revised Code section 2301.24.

“The County Auditor desires answers to the following questions:

“1. Is the shorthand reporter entitled to any compensation personally above and beyond her regular salary?

“2. If so, out of the funds of what office is the bill to be paid?

“3. If out of the funds of the Court of Common Pleas, out of what fund?

“In connection with the last question, Revised Code Section 2301.24, refers to the voucher and the warrant drawn upon the County Treasurer, by the Auditor, but it does not specify upon what fund it shall be a charge.”

Section 2301.25, Revised Code, to which reference is made, in your inquiry, reads as follows:

“When ordered by the prosecuting attorney or the defendant in a criminal case, or when ordered by the court of common pleas for its own use, in either civil or criminal cases, the costs of transcripts mentioned in section 2301.23, Revised Code, shall be taxed as costs in the case, collected as other costs, and paid by the clerk of the court of common pleas, quarterly, into the county treasury, and credited to the general fund. When more than one transcript of the same testimony or proceedings is ordered at the same time by the same party, or by the court, the compensation for making such additional transcript shall be one half the compensation allowed for the first copy, and shall be paid for in the same manner. All such transcripts shall be taken and received as prima-facie evidence of their correctness. When the testimony of witnesses is taken before the grand jury by shorthand reporters, they shall receive for such transcripts as are ordered by the prosecuting attorney the same compensation per folio and be paid therefor in the same manner provided in this section and section 2301.24 of the Revised Code.”

The provision of the final sentence in this section clearly provides for “compensation” to the shorthand reporter concerned for the performance of the particular service. The “regular salary” of such shorthand reporter is provided for in Section 2301.22, Revised Code, which section reads in part:

“Each shorthand reporter shall receive such compensation as the court of common pleas making the appointment fixes, not exceeding four thousand eight hundred dollars each year in counties where two or more judges of the court hold court regularly, and in all other counties not more than thirty-six hundred dollars.” \* \* \*

Section 2301.25, Revised Code, is a restatement of Section 1553, General Code, which section was the subject of consideration in Opinion No. 265, Opinions of the Attorney General for 1917, the syllabus of which opinion is as follows:

“The official stenographer is entitled under section 1553, G.C., to compensation for transcript of testimony of witnesses taken before the grand jury, to be paid from the county treasury.”

At the time of the writing of that opinion, Section 1550, General Code, provided for compensation in the nature of salary for shorthand reporters in substantially the same language noted above in Section 2301.22, Revised Code. Accordingly, the holding in the 1917 opinion was necessarily to the effect that the special compensation authorized under the provisions of Section 1553, General Code, was in addition to the “salary” provided in Section 1550, General Code.

This matter of dual compensation of shorthand reporters was the subject of incidental consideration in my informal opinion No. 334, dated January 28, 1954. In that opinion, after noting the provisions of Chapter 2301, Revised Code, relative to the employment and compensation of shorthand reporters, I said:

“It is thus to be seen that the reporter in each court is compensated on a dual basis, i.e., a salary to be fixed by the court, and the allowance of fees for certain special services as ordered by the court or by the parties.”

In view of the plain provisions of the statute relative to dual compensation of shorthand reporters, I am impelled to express my agreement with the 1917 opinion, *supra* and to conclude that a shorthand reporter is entitled to the compensation provided in Section 2301.25, with respect to the services described in your inquiry, in addition to the regular salary provided in Section 2301.22, Revised Code.

With respect to the fund in the county treasury from which payment is to be made, we may note that in the final sentence in Section 2301.25,

supra, payment is to be made "in the same manner provided in this section and Section 2301.24 of the Revised Code." Actually Section 2301.25, Revised Code, contains no provision as to the "manner" in which compensation is to be paid; and of course does not indicate the particular fund to be charged. Section 2301.24, Revised Code, does provide the "manner" in which payment is to be made, such provision being as follows:

"\* \* \* The clerk of the court of common pleas shall certify the amount of such transcripts or copies, which certificate shall be a sufficient voucher to the county auditor, who shall forthwith draw his warrants upon the county treasurer in favor of such shorthand reporters."

We are thus confronted with a situation in which the statute requires payment from the county treasury but does not specify the fund therein which is to be charged. A situation of this sort was considered briefly by one of my predecessors in Opinion No. 710, Opinions of the Attorney General for 1937, page 1264, the second paragraph of the syllabus in which is as follows:

"2. When a lawful claim is presented to a county treasurer for payment, and there is no designation, legal or factual, as to what fund should be charged with its payment, the rule of reason requires that such payment should be made from the general county fund. This rule is gathered from the provisions of Sections 5625-4 and 5625-5, General Code."

Sections 5625-4 and 5625-5, General Code, to which the writer of the 1937 opinion thus referred, then provided in part as follows:

Section 5625-4, General Code:

"The taxing authority of each subdivision shall divide the taxes levied into the following separate and distinct levies: \* \* \*

"2. The general levy for current expenses within the ten mill limitation. \* \* \*"

Section 5625-5, General Code:

"The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expense of any kind may be made \* \* \*."

I agree with the writer of the 1937 opinion that this provision in Section 5625-5, supra, is indicative of the legislative intent that where provision is made by law for the expenditure of funds from the county

treasury, but where such law does not specify the particular fund therein to be charged, such payment should be made from the county general fund. In the instant case some additional support for such conclusion may be found in the provisions of Section 2301.25, supra, relative to the disposition of costs collected in criminal cases. It will be observed that the expense of transcripts ordered by the prosecuting attorney in a criminal case is to be "taxed as costs in the case, collected as other costs, and paid by the clerk\* \* \* into the county treasury, and credited to the general fund." This provision would indicate a legislative intent that the assumption of such expense by the county is for the purpose of permitting prompt payment for the services in question with eventual reimbursement therefor being made to the county upon settlement of costs in the case. It would appear logical, therefore, that the initial payment should be made from the same fund, i. e., the general fund, to which such eventual payments are to be credited. In this connection it may be noted that although there is found in Section 5705.09, Revised Code, a requirement that each subdivision shall establish "a special fund for each class of revenue derived from a source other than the general property tax," the special proviso in Section 2301.25, supra, that revenues of the sort here involved are to be "credited to the general fund" would supersede such general statutory provision in this respect. It would thus appear that there is no authority for the establishment of a special fund, separate and apart from the county general fund, in the county treasury to which costs of this sort could be credited when collected, and from which payment for the services here involved could be made.

In reaching these conclusions I am not unmindful of the general authority provided in Section 5707.02, Revised Code, for a levy by the county commissioners within the constitutional limitations for the purpose of creating a "judicial and court fund" to be "expended for the payment of all expenses of the various courts of the county." It is to be observed, however, that there is no provision in this section for the reimbursement of this fund upon the collection of costs in cases where payments to the shorthand reporter is authorized in advance of collection of costs from the parties upon whom such expense is ultimately to fall. For this reason, and because the special provisions of Section 2301.18, et seq., Revised Code, must be deemed to supersede the general provisions of Section 5705.02, supra, I am impelled to the conclusion that the provisions of the latter section have no application in the instant case.

Your question regarding "the funds of what office" should be charged with this item leads me to suppose that you may be under a misappre-

hension in the matter of the distinction between (1) the several *funds* in the county treasury established pursuant to the provisions of Section 5705.09, Revised Code, and (2) the *amounts appropriated* for the use of the several county offices pursuant to the provisions of Section 5705.38, Revised Code. A fund, strictly speaking, is an amount of money actually on hand, whereas an appropriation is merely an authorization to expend, during a particular period, money in a designated amount from such funds presently available therefor or which may become available through receipts for revenue during such period.

Your question in this connection further suggests that you are confronted with a situation in which no appropriation was made, under the provisions of Section 5705.38, *supra*, presumably for the reason that such item was not included within the budget request of any of the interested county officers. If such is the situation it would appear to be a proper case in which to apply for a supplemental appropriation measure as provided in Section 5705.40, Revised Code. It may here be noted incidentally, that this section forbids the amendment of any appropriation so as to reduce it "below an amount sufficient to cover all unliquidated \* \* \* obligations certified from or against the appropriation." Because the item here involved represents an expenditure made mandatory by law, it would plainly appear to be an "unliquidated obligation," and this language thus implies that there is a mandatory duty to include all such items in the budget and appropriation measure as originally prepared. Accordingly, if this item has been omitted from the budget and appropriation measure as originally made up, there would appear to be a mandatory duty on the commissioners, as the taxing authority of the county, to include it in a supplemental appropriation.

This leads to an inquiry as to which the several interested county offices should be given a supplemental appropriation for the item here involved. It would seem, so far as the county budget law is concerned, that the item for this expense might with equal propriety be included in the budget and appropriation for either the prosecuting attorney, the clerk, or the common pleas court. However this may be, I am informed that the auditor of state, acting under the authority given him in Section 117.05, Revised Code, to prescribe a uniform system of accounting for local taxing districts, has ruled that items of expense for shorthand reporters should be included in the budget and appropriation for the court, and that such is the uniform practice in the several counties. It would appear, therefore, that the supplemental appropriation in the instant case should be thus made.

For these reasons, and in specific answer to your inquiry, it is my opinion that :

1. The allowance provided in Sections 2301.24 and 2301.25, Revised Code, for the preparation of transcripts by shorthand reporters, is in addition to the compensation allowed such reporters under the provisions of Section 2301.22, Revised Code.

2. The compensation of a shorthand reporter for the preparation of transcripts of testimony of witnesses before the grand jury, when ordered by the prosecuting attorney may be paid upon certificate of the clerk of courts as provided in Section 2301.24, Revised Code ; and such payment should be charged against the county general fund.

3. An item for the expense of compensating shorthand reporters, including the fees advanced them under the provisions of Section 2301.25, Revised Code, should be included in the budget and appropriation of the common pleas court, and when such item has been omitted from the original budget and appropriation it should be included in a supplemental appropriation for such court.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General