

have any interest in the expenditure of money on the part of the corporation other than his fixed compensation.”

Obviously, if a member of a board of trustees of public affairs for a village also serves as marshal of such village, he would be performing services for the village outside of his duties as such board member, and if he receives compensation for such outside services it would appear that he would be having an interest in the expenditure of money on the part of such village other than his fixed compensation as trustee of the board of public affairs.

Therefore, in specific answer to your question, I am of the opinion that a member of a board of trustees of public affairs for a village may not serve as marshal of such village and receive compensation for the office of marshal, in addition to his compensation as a member of a board of trustees of public affairs of such village.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1454.

FEES—CERTIFIED COPY OF JOURNAL ENTRY, RECORD OR PROCEEDING FROM PROBATE JUDGE—SECTION 10501-42 G. C. PROVIDES RATE—WHEN COPY PRESENTED TO JUDGE TO CERTIFY—SECTION 2901 G. C. PROVIDES RATE—WHERE DEPUTY WORKS AFTER OFFICE HOURS AND PROVIDES COPY—TYPING CHARGE NOT SUBJECT OF STATUTORY REGULATION.

SYLLABUS:

When a person requests a certified copy of a journal entry, record or proceeding from a probate judge, the probate judge shall charge and collect for the same at the rate of ten cents per 100 words, with a minimum charge of fifty cents, as provided in section 10501-42, supra. If such person presents a copy of the original journal entry or proceeding to the probate judge, with a request that the judge certify the same to be a correct copy, the judge should be governed by section 2901, supra, in making a charge of thirty-five cents therefor. If the copy of the journal entry, record or proceeding is made by a deputy of the probate court, working after office hours, typing charges made by such deputy are

matters of personal concern between the deputy and the person requesting the copy are not made the subject of statutory regulation.

COLUMBUS, OHIO, November 21, 1939.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN :

This will acknowledge receipt of your recent communication, which read as follows :

“In the Probate Court of a county it is a practice to allow the deputies to make copies of proceedings in the court, which copies are then certified to by the judge. The cost of preparing such copies and a certificate fee of twenty-five cents for each certificate is charged in the costs of the case, and when collected, the certificate fees are paid into the county treasury, but the amount for the typing of the copies is paid to the deputy for her personal use, it being stated that the deputy makes such copies after working hours.

Is such procedure correct ; or should the judge tax and collect a fee of ten cents per hundred words for the certified copies, as provided in section 10501-42, General Code?

Section 10510-11, General Code, provides that in proceedings to sell real estate in the Probate Court, if the action is brought in a county other than that in which the real estate is located, a certified transcript of the record of all proceedings had therein shall be filed with and recorder by the Probate Court of the county where such real estate is located.

An administrator appointed in one county employs a deputy in the Probate Court's office in that county to make copies of all the proceedings in a case to be filed in the county where the real estate is located. Such deputy prepares such copies after working hours, and is compensated by the administrator. The Court certifies to such copies, and charges fees of twenty-five cents for each certificate.

Is the deputy entitled to the compensation paid to her ; and is the judge taxing the correct fee ; or is the judge to collect a fee of ten cents per hundred words for a certified copy of a journal entry, record or proceeding, even though such copies have not been prepared in his office?”

The fees to be charged by a probate judge for various services rendered by his office are set forth in section 10501-42, General Code, which, so far as pertinent to your inquiry, is as follows :

“The fees enumerated in this section shall be charged and collected, if possible, by the probate judge and shall be in full for all services rendered in the respective proceedings:

* * *

43. For certified copy of a journal entry, record or proceedings, per 100 words (minimum fee 50 cents).....10

* * *

48. Provided, however, that in estates the assets of which do not exceed five hundred dollars in value the total fees of the probate judge chargeable against such estate shall not exceed 10.00.”

It is thus apparent that when a probate judge is requested to prepare and certify copies of any journal entries, records or proceedings in his court, it is his duty to charge and collect, if possible, a fee of ten cents per 100 words for certified copies thereof, with a minimum fee of fifty cents.

It is common practice, however, for persons requiring certified copies of journal entries, records or proceedings, to present copies thereof to the probate judge and request him to certify that the same be correct copies of matters of record in his office. An examination of the entire fee schedules shown in section 10501-42, supra, shows that no provision has been made for the fee to be charged by a probate judge for making such a certificate. In section 10501-43, General Code, schedules are shown for certain fees to be paid by the county treasurer, none of which are pertinent to your inquiry herein. Provision is made for any other unscheduled services in section 10501-44, General Code, as follows:

“For other services for which compensation is not otherwise provided by law, the probate judge shall be allowed the same fees as are allowed the clerk of the court of common pleas for similar services.”

The clerk of the court of common pleas is governed in his charges by sections 2900 and 2901, General Code, which, so far as pertinent to your inquiry, are as follows:

Section 3900.

“For the services hereinafter specified, when rendered, the clerk shall charge and collect the fees provided in this and the next following section and no more: ***”

Section 2901.

“*** for making copies of pleadings, process, record, or files, including certificate and seal, ten cents per hundred words; ***

for certificates of fact under seal of the court, to be paid by the party demanding same, thirty-five cents; ***."

Applying this fee schedule it is evident that the probate judge is only required to charge thirty-five cents for a certificate of fact certifying that a copy of any proceedings in his court furnished an interested party is a true and correct copy of the original on file in his office. It appears immaterial where such person obtains his copy of the proceedings he asks to have certified. It may be a carbon copy or a copy made by a stenographer privately employed or, as in the case you have suggested, the copy may be made by a deputy after working hours. It is within the power of the probate judge to determine what hours his court is to be open and to prescribe the hours and duties of his deputies. State employes are required by section 154-20, General Code, to "render not less than eight hours of labor each day, Saturday afternoons, Sundays and days declared by law to be holidays excepted in cases in which, in the judgment of the director, the public service thereby will not be impaired." But no similar provision has been enacted to govern the working hours of county employes. The duty to supervise and prescribe working hours of his deputies is vested in the probate judge. What a deputy does after working hours should be of no concern to the probate judge so long as such outside activities do not impair the working ability of the deputy. If such deputy chooses to do typing after hours, it is an individual undertaking. The charge for such typing is made by the deputy as an individual, not in any official capacity. It is therefore not a matter of statutory regulation and should not be entered upon the accounts and records of the court.

In specific answer to your inquiry, I am of the opinion that, when a person requests a certified copy of a journal entry, record or proceeding from a probate judge, the probate judge shall charge and collect for the same at the rate of ten cents per 100 words, with a minimum charge of fifty cents, as provided in section 10501-42, *supra*. If such person presents a copy of the original journal entry or proceeding to the probate judge, with a request that the judge certify the same to be a correct copy, the judge should be governed by section 2901, *supra*, in making a charge of thirty-five cents therefor. If the copy of the journal entry, record or proceeding is made by a deputy of the probate court, working after office hours, typing charges made by such deputy are matters of personal concern between the deputy and the person requesting the copy and are not made the subject of statutory regulation.

Respectfully,

THOMAS J. HERBERT,
Attorney General.