as a board by electing one of their number by ballot as chairman. If they fail so to elect a chairman within ten minutes, they shall immediately choose a chairman by drawing lots. At this meeting, they shall make all necessary arrangements for securing the ballot boxes and the proper accommodations for themselves and the clerks of elections in receiving and counting ballots at the ensuing election, and also, if requested, for the witnesses and challengers designated by each political party, as provided in the next section."

In other words, in registration cities the presiding judge at the November, 1929, election, will be selected by ballot by the registrars and judges of election in the precinct.

Specifically answering your question, I am of the opinion that in a precinct where the voters are not required to register, the presiding judge in the November election in 1929, shall be of the political party which polled the greatest number of votes for Governor in that precinct at the November election in 1928; and in precincts where the voters are required to register, the presiding judge or chairman shall be selected by ballot of the registrars and judges of election in said precinct.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1111.

CORONER—MAY HOLD INQUEST UPON DEAD BODY BROUGHT INTO HIS COUNTY—CONDITIONS NOTED—LIMITATIONS OF PROSECUTING ATTORNEY IN EXPENDITURE OF HIS SECTION 3004 FUND, DISCUSSED.

SYLLABUS:

1. *The coroner of a county into which a dead body had been brought after death in another county, may lawfully hold an inquest thereon, providing there are reasonable grounds to suspect that the death had been caused by violence, through unlawful means, and providing further, that an inquest had not previously been held by the coroner of the county where the death had occurred or where the body may have been previously found.*

2. *A prosecuting attorney, in the expenditure of the funds allowed by him, by virtue of Section 3004, General Code, is limited only in such expenditures to expenses incurred by him in the performance of his official duties and in the furtherance of justice not otherwise provided for.*

COLUMBUS, OHIO, October 28, 1929.

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

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

"One H. J. died at the Boys Industrial School in Fairfield County. His body was removed to Marietta, Ohio, his former home. The coroner

of Washington County held an inquest on the body, incurring the following expense:

Fees of Coroner	$33.60
Fees of physician for performing an autopsy	20.00
Paid to O. S. Creighton, a member of the Legislature for expenses from Columbus to Marietta	12.58
Fees of undertaker for professional services at post mortem	25.00

All of the above expenses were paid out of the county treasury of Washington County.

Question 1.

Was there any authority in law for the coroner of Washington County to hold this inquest, and, if not, can the expenses so paid be recovered to the county?

In addition to the above expense, the prosecuting attorney paid out of the fund turned over to him under the provisions of Section 3004 G. C., $41.50 to a stenographer for taking testimony at the coroner's inquest and out of the same fund to the coroner, as special investigator, $42.50.

Question 2.

Could these payments be legally made, and, if not, may they be recovered to the county?"

The authority for a coroner to hold an inquest is found in Section 2856, General Code, which reads in part:

> "When informed that the body of a person whose death is supposed to have been caused by violence has been found within the county, the coroner shall appear forthwith at the place where the body is, issue subpoenas for such witnesses as he deems necessary, administer to them the usual oath, and proceed to inquire how the deceased came to his death, whether by violence from any other person or persons, by whom, whether as principals or accessories before or after the fact, and all the circumstances relating thereto. * * * "

Prior to the codification of 1910, the above statute was known as Section 1221, Revised Statutes, and was construed by the Supreme Court in the case of *State ex rel* vs. *Bellows,* 62 O. S. 307, where it is held:

> "Within the meaning of Section 1221, Revised Statutes, providing for inquests by the coroner, a dead body 'is found within the county' when it is ascertained to be in the county; and death is supposed to have been caused by violence whenever the coroner from observation or information has substantial reason for believing or surmising that death was caused by unlawful means."

In 13 Corpus Juris, page 1248, it was said:

> "An inquest is properly held in the territory of the coroner in whose jurisdiction the body is found without regard to where the death occurred or where the injury was received."

In an opinion of the Attorney General, found in Opinions of the Attorney General for 1923, at page 19, it was held as stated in the syllabus:

> "Jurisdiction of coroner limited to county. Inquest to be held by coroner in whose county body is found. The body is 'found' in the county where it is ascertained to be. Coroner cannot follow body into another county and there hold an inquest."

At common law, in England, prior to its being changed by statute, the jurisdiction over an inquest, in so far as the place where it might be held was concerned, was conferred upon a coroner only within whose jurisdiction the injury which caused the death had been received. Thus, "if a man were hurt in the county of A, and died in the county of B, the coroner of the county of B could not take an inquisition of his death, because the stroke was not given in that county; nor could the coroner of the county of A take an inquisition because the body was in the county of B, but they used to remove the body into the county of A and there the coroner of that county could take inquisition or if he were stricken and had also died in the county of A and the body had by some means been afterwards removed into another county he ought to be removed into the county of A, where he was stricken and died, and if a mortal stroke had been given in the county of A and he had gone into, and died in the county of B, and the body after death had been taken into the county of C, the body should be removed into the county of A for the taking of a sufficient inquisition." 2 Hale, Pl. Cr., 66.

In those times a coroner took the place of a grand jury and was empowered to present indictments. The reason for the rule just stated, as gathered from the decisions of the courts appears to be that the coroner's duty requiring him, in case it should appear that murder or manslaughter had been committed, to cause indictments to be made against the guilty person, no sufficient indictments thereof could be taken in any of the counties except the county in which the stroke had been given.

The common law rule stated above, was not changed in England until the statute of 6 and 7 Victoria, Chapter 12, which provided:

> "That the coroner only within whose jurisdiction the body of any person upon whose death an inquisition ought to be holden shall be lying dead, shall hold the inquisition notwithstanding that the cause of death did not arise within the jurisdiction of such coroner."

In a case construing the statute, where the injury was inflicted and death occurred outside the City of London, but afterwards the body was removed into the city, it was held that the inquisition was properly held by the coroner of London although the cause of death arises without his jurisdiction. *Reg.* vs. *Ellis* 2 C & K, 470, 61 E. C. L., 470.

The common law rule which obtained in England, as stated above, seems never to have been in force in Ohio, at least not since 1805, at which time the first law relating to this subject, after Ohio became a state, was enacted. 3 O. L. 158, Section 6. It was there provided that the coroner shall, as soon as he is informed of the dead body of any person supposed to have come to his or her death by violence or casualty "found dead within the county", hold an inquisition thereon.

There had always been some difference of opinion as to just what was meant by the expression "found within the county" until the decision of the case of *State ex rel* vs. *Bellows,* noted above. Under a somewhat similar statute, it was held by the Supreme Court of Arkansas, in *Young* vs. *Pulaski County,* 74 Ark., 183:

"The purpose of a coroner's inquest, namely, to ascertain the cause of death, and to secure information and evidence in case of death by violence or other undue means, that the guilty may be apprehended, requires that the coroner of the county either wherein the crime was committed or the body was found, should have jurisdiction to make such inquiries, and the coroner of either of such counties has such jurisdiction.

The whole purpose of the coroner's inquest being obtained when the coroner of the county either wherein the crime was committed or the body was found holds the inquest, it follows that the coroner of no other county has jurisdiction, and no useful purpose would be secured in giving him jurisdiction."

In the case submitted, I assume that the coroner acted in good faith, that is to say that he had reasonable grounds to suspect that the death had occurred by violence and possibly by some unlawful means. That such reasonable grounds for suspicion did exist, would appear from the fact that the Prosecuting Attorney of Washington County saw fit to make some investigation of the matter. In a former opinion rendered by this department, found in Reports of the Attorney General for 1913, at page 1284, it is held:

"In order to draw his fee the coroner is not bound, in all cases, to find that the death was caused by unlawful means. The circumstances, however, must be such as to make a reasonable man suspect that unlawful means had been used. The coroner must act in good faith upon the information given him and must reasonably suspect that violence has been used, through unlawful means, although upon investigation he might find that no wrong had been in fact done."

I also assume that the coroner in Fairfield County where the death occurred, did not hold an inquest. I am of the opinion that if the coroner of Fairfield County had held an inquest on this body that the coroner of Washington County would not have been authorized to hold an inquest, and under those circumstances, it would have been unlawful to have drawn from the treasury of Washington County any moneys for the holding of an inquest. Assuming, however, that the coroner of Washington County had reasonable grounds of suspicion that the death had occurred by violence, and that the coroner of Fairfield County, where the death occurred, had not held an inquest, I am of the opinion that the coroner of Washington County, to which county the body had been removed after death, lawfully could hold an inquest, and that the payment of the proper fees and mileage, in accordance with law, lawfully could be paid from the treasury of Washington County.

Coming now to your second question. By the terms of Section 3004, General Code, it is provided that there shall be allowed annually, to the prosecuting attorney, in addition to his salary and the allowance provided by Section 2914, General Code, an amount equal to one-half of his salary "to provide for expenses which may be incurred by him in the performance of his official duties and in the furtherance of justice, not otherwise provided for." There is no limitation on how or for what this allowance shall be expended by the prosecuting attorney except that it be in the performance of his official duties and in the furtherance of justice not otherwise provided for. By the terms of Section 2916, General Code, the prosecuting attorney shall have power to inquire into the commission of crimes within the county.

I of course do not know what the prosecuting attorney had in mind when he

employed a stenographer to take the testimony at the inquest, or when he employed the coroner as special investigator. It is barely possible that the purpose of his investigation in this respect, was to inquire into the fact of whether or not some crime in connection with the death of this boy had been committed in Washington County. There is no limitation on how the prosecutor may expend the funds allowed to him by virtue of Section 3004, General Code, except that it be in the performance of his official duties and in the furtherance of justice, and he, himself, is the judge of the necessity of the expenditure of those funds for the purposes mentioned. If, in the opinion of the prosecutor, any expenditure from those funds is in the performance of his official duties and in the furtherance of justice, it is almost impossible for anyone to say, as a matter of law, that the expenditures are illegal. Instances might occur, of course, where a prosecuting attorney might abuse his discretion in this matter, but I could not say that that was done in this case, unless it may be said that the payment to the coroner was for services which he was bound to perform anyway and for which other provision for payment had been made.

Clearly, in my opinion, the prosecutor lawfully could expend the proceeds of his Section 3004 fund for the purposes for which it was expended, that is for a stenographer to take testimony at a coroner's inquest and for a special investigator in cases where there is a suspicion that death had come about by violence or by unlawful means, providing that the investigator is not a person whose official duties are to make the same investigation. A coroner is required, under certain circumstances, to hold an inquest, and such information as he gains in the holding of that inquest should be available to the prosecuting attorney without any additional payment to the coroner other than that allowed him for holding the inquest. It is possible, however, that the prosecutor in this case, may have employed the coroner as a private individual, to make some special investigation that required him to do something else than what he was required to do in the holding of the inquest, for instance, it might have been necessary in order to do what the prosecutor wanted done, for the coroner to go over to Fairfield County and make some private investigation of certain matters connected with the death of the boy which the witnesses at the inquest could not furnish. For that purpose, I am of the opinion that the prosecutor lawfully could pay the coroner.

All the facts connected with this matter do not appear in your inquiry, and I am unable, therefore, to state definitely whether or not the payment made by the prosecutor to the coroner for special investigation, was lawful.

In specific answer to your questions, therefore, I am of the opinion:

First, the coroner of Washington County, under the circumstances related in your inquiry, was authorized to hold the inquest referred to, and payment from the treasury of Washington County of the regular fees for that inquest was lawful, assuming of course that the coroner acted in good faith and upon reasonable grounds of suspicion, that the death occurred by violence, and also assuming that the coroner of Fairfield County did not hold an inquest.

Second, the money paid by the prosecuting attorney of Washington County, for the taking of testimony at the coroner's inquest referred to, and to the coroner, as special investigator, may or may not have been illegally paid. I am unable to state as a matter of law, that those payments were illegal.

Respectfully,

GILBERT BETTMAN,

Attorney General.