

2071.

DISBARMENT PROCEEDINGS—PERSONS APPOINTED UNDER SECTION 1710 GENERAL CODE MAY NOT RECEIVE MORE THAN ONE HUNDRED DOLLARS.

SYLLABUS:

Persons appointed under the provisions of Section 1710, General Code, to contest the modification of a decree and the same is contested in the court of appeals, and in the supreme court, may not each be allowed one hundred dollars in each court, but said allowance to each such person, is limited to a sum not exceeding one hundred dollars for the entire service.

COLUMBUS, OHIO, December 12, 1924.

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

Gentlemen:—

Acknowledgment is hereby made of the Bureau's recent communication which reads:

"Section 1710 G. C. provides that the court in which disbarment proceedings are filed shall allow to the person or persons appointed to file and prosecute the charges, or to resist the modification of any decrees, for their services in each case, such sum as by the court may be deemed reasonable, not exceeding one hundred dollars, to each person, together with the costs and expenses incurred by them in such proceedings.

Question:

Where persons are appointed to contest the modification of a decree and the same is contested in the court of appeals and in the supreme court, may such persons each be allowed two hundred dollars or one hundred in each court?"

Section 1710, General Code, provides as follows:

Expenses and costs, how paid.

"The court in which such charges, or written motion, is filed, shall allow to the person or persons appointed to file and prosecute the charges, or to resist the modification of any decree, for their services in either case, such sum as by the court may be deemed reasonable, not exceeding one hundred dollars to each person, together with the costs and expenses incurred by them in such proceedings. The amounts so allowed shall be paid from the county treasury of the county wherein such proceedings are had, upon the warrant of the county auditor. If such charge or motion, is filed in the supreme court, such allowances shall be paid from the state treasury."

So much of said section as is pertinent reads:

"The court in which such charges, or written motion, is filed, shall allow to the person or persons appointed to file and prosecute the charges, or to resist the modification of any decree, for their services in either case, such sum as by the court may be deemed reasonable, not exceeding one hundred dollars, to each person, * * *"

It will be noted that under the said section no specific sum is provided as the fee for attorneys who are appointed to resist the modification of the decree; but the fee is:

“such sum as by the court may be deemed reasonable”

with the limitation that the maximum amount allowed shall be a sum “not exceeding one hundred dollars, to each person.” It is further noted that the sum allowed is “for their services in either case.” It is only a fair inference from the language used that the legislature intended to and did provide in said Section 1710 General Code, that the amount allowed for the entire services, to any person was, such sum as the court may deem reasonable, but not to exceed one hundred dollars to each person in either case.

The constitutional inhibition is:

“No money shall be drawn from any county * * * treasury, except by authority of law.”

Ohio Constitution, Art. X, Sec. 5.

Section 13618, General Code, in part reads:

“Counsel so assigned in a case of felony shall be paid for their services by the county and may receive therefor * * *; in a case of manslaughter not exceeding one hundred dollars; and in other cases of felony not exceeding fifty dollars. * * *.”

In construing this section, this department in an opinion found in Volume II, page 1425, Opinions of Attorney General 1913, held that:

“Where counsel is assigned in a case of felony and is allowed a certain fee by the court, and the case is carried to the court of appeals, the counsel so appointed may not receive more than the fifty dollars allowed by statute, and the county commissioners have no authority to pay him more.”

It is further stated in the said opinion that:

“As the statute is clear and unequivocal, the authority of the commissioners in making the allowance is limited to the fifty dollars.

This appointment is made to defend the accused as to the indictment against him. Counsel so appointed, in taking a cause to a reviewing court must do so with the understanding that he can only receive fifty dollars for his work in both courts, and also that if he secures a reversal he must go through a second trial with a limitation of fifty dollars attached to his compensation. It is not a question of how much the services are worth, but how much the commissioners are authorized to pay.”

Specifically answering the Bureau's question, it is the opinion of this department that where persons are appointed under Section 1710, General Code, to contest the modification of a decree, and the same is contested in the court of appeals and in the supreme court, such persons may not each be allowed two hundred dollars or one hundred dollars in each court, but may each be allowed not to exceed one hundred dollars each for the entire service.

By supplemental statements the Bureau has informed this department that, in the instant case three attorneys were paid two hundred dollars each for services in

resisting, in the court of appeals and the supreme court, the modification of a decree of disbarment, and that said allowances were approved by the court of appeals.

As said allowances were paid, and received in good faith by said attorneys for the services rendered, it is not believed that a finding against said attorneys for the repayment of said allowances should be made in this instance; but it is believed that the opinion herein rendered should apply to future cases.

Respectfully,

C. C. CRABBE,

Attorney General.

2072.

APPROVAL, BONDS OF ASHTABULA CITY SCHOOL DISTRICT, ASHTABULA COUNTY, \$100,000.00, SCHOOL IMPROVEMENT BONDS.

COLUMBUS, OHIO, December 13, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2073.

APPROVAL, BONDS OF CITY OF SIDNEY, SHELBY COUNTY, \$5,000.00, WATERWORKS AND SEWER IMPROVEMENTS.

COLUMBUS, OHIO, December 13, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2074.

APPROVAL, BONDS OF CITY OF CUYAHOGA FALLS, SUMMIT COUNTY, \$10,000.00, WATERWORKS IMPROVEMENTS.

COLUMBUS, OHIO, December 13, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.