

198.

PUBLIC RECORDS—CORONER—METHOD OF KEEPING—MUST BE  
TURNED OVER TO SUCCESSOR—DISPOSITION OF FEES CHARGE-  
ABLE FOR TRANSCRIPTS.

*SYLLABUS:*

1. *The records specified in section 2856-2, General Code, should be kept in the coroner's office, and at the expiration of the term of a coroner such records should be turned over to his successor and should not be filed in the office of the clerk of the court of common pleas.*

2. *While there is no requirement that a coroner keep a record book of any particular kind, the records mentioned in said section should be of such permanency that they can be preserved and a proper index should be kept of such records.*

3. *The coroner should charge the fee provided by said section for making transcripts, and in counties of less than 400,000 population, according to the last federal census, the coroner is entitled to retain such fees, subject to the limitation that his fees shall not exceed \$5,000 per annum.*

COLUMBUS, OHIO, March 8, 1933.

HON. RAY B. WATTERS, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—I acknowledge receipt of a communication from your office which reads as follows:

"Several questions have arisen in connection with the conduct of the Coroner's Office. As you know Section 2856 General Code, provides that the testimony of witnesses must be reduced to writing and with the finding and recognizances returned by the Coroner to the Celrk of the Court of Common Pleas.

Section 2856-2 provides that when the Coroner has an official stenographer-secretary, it is her duty to preserve and file properly indexed records of all official records, etc.

It further provides that all records in the Coroner's Office shall be open for inspection by the public.

The previous incumbent has filed all of his records in the office of the Clerk of Common Pleas Court.

1. Is the present Coroner either entitled or compelled to have these records in his office?

2. In addition to the reports mentioned in Section 2856-2, should the Coroner keep a permanent record book of any kind?

3. Section 2856-2 provides that upon demand and payment of the transcript fee, any one can secure copies of the records. Is the Coroner entitled to retain this fee or must it be turned over to the General Fund, it being understood that Summit County, according to the last Federal Census, had a population of less than 400,000 and more than 100,000?

4. Is Section 2866, which sets out a schedule of fees but no mention of the fees for certified copies, a restriction on Section 2856-2 in reference to charging for certified copies?

Your opinion on the above questions will be greatly appreciated."  
Section 2856-2, General Code, reads in part as follows:

"In counties having a population according to the last federal census of 400,000 or more, the coroner may appoint in writing a pathologist, who shall assist in doing autopsies and making such pathological and chemical examinations and performing such other duties as may be required and directed by the county coroner or recommended by the county prosecuting attorney, and shall be known as deputy coroner.

In counties having a population according to the last federal census of 100,000 or more, the coroner may appoint in writing an official stenographer-secretary who shall record the testimony of witnesses in attendance upon the coroner's inquests and preserve and file properly indexed records of all official reports, acts and communications of the office, and perform such other services as may be required by the coroner."

It was evidently the legislative intent that the things mentioned in this section should be kept in the coroner's office. This section provides for the preservation thereof and that all such records in the coroner's office shall be open to inspection by the public. I am of the view that this means that such records shall be kept open to the inspection by the public in the coroner's office, and that they include not only the records of the present coroner but also those of his predecessors. There is no provision for the filing of any of the coroner's records with the clerk of the court of common pleas, except such as are authorized by section 2856, General Code, which relate to the inquest and the coroner's proceedings thereon. This section reads in part as follows:

"The testimony of such witnesses shall be reduced to writing, by them respectively subscribed except when stenographically reported by the official stenographer of the coroner, and, with the finding and recognizances hereinafter mentioned, if any, returned by the coroner to the clerk of the court of common pleas of the county."

Section 2856-2, General Code, provides that the official stenographer-secretary shall preserve and file properly indexed records of all the official reports, acts and communications of the office, and shall record the testimony of witnesses who testify at inquests. While there is no requirement of a permanent record book of any particular kind, such records should, of course, be of such permanency that they can be preserved.

Section 2856-2, General Code, provides that a copy of any of the records may be obtained by any person upon demand and payment of a transcript fee of fifteen cents per hundred words.

In counties of over 400,000 population according to the last federal census, coroners shall receive a salary of \$6,000 per year, payable from the county treasurer, as is provided by section 2856-4, General Code. In such counties, the coroner is required to pay into the county treasury all fees to which he is entitled.

As to counties having a population, according to the last federal census, of less than 400,000, section 2866-1, General Code, reads as follows:

"In counties having a population, according to the last federal census, of less than four hundred thousand the total compensation paid to the coroner as fees, under all sections of the General Code, in no case shall exceed five thousand dollars per annum or be less than one hundred and fifty dollars per annum. If the fees in any one year are less than the minimum compensation allowed by law then such coroner shall be

allowed the difference up to one hundred and fifty dollars to be paid by the county commissioners out of the emergency or contingent fund."

In counties of less than 400,000 population, therefore, the coroner is entitled to retain all the fees which he has the right to receive up to \$5,000 each year, including the fees provided for in section 2856-2, General Code. There is no provision that he pay any of these fees into the county treasury, except that the section above quoted impliedly requires such payment of all fees he receives in excess of \$5,000 in any one year. In the Opinions of the Attorney General for 1927, Vol. III, page 1856, the following is said:

"No change is made affecting the amount of compensation to be paid to coroners in counties having a population of less than 400,000 other than that the total amount which such coroners are permitted to receive shall not be more than \$5,000, nor less than \$150 per year. If the total amount of fees earned by a coroner in counties having a population of less than 400,000 is less than \$150, he shall be paid a sufficient amount from the emergency or contingent fund of the county to make up the difference, up to \$150. No provision is made for the payment into the county treasury of fees collected by coroners in counties with a population of less than 400,000. It may well be implied, however, that if he should receive fees in excess of \$5,000 in any one year, he would be required to account for the excess."

Section 2866, General Code, reads as follows:

"Coroners shall be allowed the following fees: For view of dead body, three dollars; for drawing all necessary writings, for every one hundred words, ten cents; for traveling each mile, ten cents; when performing the duties of sheriff, the same fees as are allowed to sheriffs for similar services."

This is a schedule of fees for certain designated services. By no means does it follow that no fees can be allowed for services not designated therein which the coroner must perform, and for which services fees are expressly provided for by other statutes. For instance, it could not be said that this section prevents the coroner from charging for autopsy fees which are provided for by section 2856-3, or from charging fees for the service of process in actions in which the sheriff is a party or is interested.

I am therefore of the opinion that,

1. The records specified in section 2856-2, General Code, should be kept in the coroner's office, and at the expiration of the term of a coroner such records should be turned over to his successor and should not be filed in the office of the clerk of the court of common pleas.

2. While there is no requirement that a coroner keep a record book of any particular kind, the records mentioned in said section should be of such permanency that they can be preserved and a proper index should be kept of such records.

3. The coroner should charge the fee provided by said section for making transcripts, and in counties of less than 400,000 population, according to the last federal census, the coroner is entitled to retain such fee, subject to the limitation that his fees shall not exceed \$5,000 per annum.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*