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DULY CERTIFIED FEES OF WITNESSES SUBPOENAED BY A MUNICIPAL CIVIL SERVICE COMMISSION ARE PAYABLE OUT OF THE COUNTY TREASURY—SUCH FEES SHOULD BE CERTIFIED BY THE COMMISSION TO THE COUNTY AUDITOR BEFORE ISSUING ORDER OF VOUCHER TO THE COUNTY TREASURER — §§143.07, R.C., 2335.06, R.C., Opinion 1619, OAG, 1916, §2335.05, R.C.

SYLLABUS:

Under Section 143.07, Revised Code, fees of witnesses subpoenaed by a municipal civil service commission in a hearing before it, when the same are duly certified by the commission and audited, are payable out of the county treasury.

2. Such fees should be certified by the commission to the county auditor who should audit the same before issuing an order or voucher under Section 319.16, Revised Code, to the county treasurer for their payment.

Columbus, Ohio, August 13, 1962

Hon. Everett Burton, Prosecuting Attorney
Scioto County, Portsmouth, Ohio

Dear Sir :

I have received your request for my opinion on the following questions:

1. Are witness fees and travel expense of witnesses before a municipal civil service commission proper charges against the county treasury?

2. If the answer to question No. 1 is in the affirmative, who has the duty of auditing the certification of such fees?

As to the first question, Section 143.07, Revised Code, reads, in part, as follows:

“The director of state personnel shall:

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“(E) Have the power to subpoena and require the attendance and testimony of witnesses and the production of books,

papers, public records, and other documentary evidence pertinent to the investigations, inquiries, or hearings on any matter which he has authority to investigate, inquire into, or hear. Fees shall be allowed to witnesses, and on their certificate, duly audited, shall be paid by the treasurer of state, or in the case of municipal civil service commissions by the county treasurer, for attendance and traveling, as is provided in section 2335.06 of the Revised Code for witnesses in courts of record. * * *

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Section 2335.06, Revised Code, referred to in the above language of Section 143.07, *supra*, reads in pertinent part as follows:

“(A) Three dollars for each day’s attendance at a court of record, or before a judge of a county court, mayor, or person authorized to take depositions, to be taxed in the bill of costs. Each witness shall also receive five cents for each mile necessarily traveled to and from his place of residence to the place of giving his testimony to be taxed in the bill of costs; on demand a witness shall be paid one dollar by the party at whose instance he is subpoenaed before being required to answer said subpoena which shall be considered a part of any fees to which said witness is entitled;

“* * *

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Under Section 143.07, *supra*, the fees of witnesses attending a hearing of a municipal civil service commission, on subpoena, are to be paid by the county treasurer, and payment is to be made for attendance and traveling as is provided in Section 2335.06, *supra*, for witnesses in courts of record. In this regard, I note that one of my predecessors had occasion to consider a similar question as to the language now found in Section 143.07, *supra*, then (1916) in former Section 486-7, General Code. In Opinion No. 1619, Opinions of the Attorney General for 1916, page 924, the syllabus reads as follows:

“Fees of witnesses subpoenaed by a municipal civil service commission in any hearing before it, when the same are duly certified by said commission and audited, are payable out of the county treasury.”

It is true that Section 143.30, Revised Code, provides that the expenses of a municipal civil service commission shall be determined by the legislative authority of the city, and that sufficient funds be provided to meet such expenses. In view of Section 143.07, *supra*, however, fees for

travel and expenses of witnesses at civil service commission hearings are not expenses of the commission—they are to be paid by the county treasurer.

Section 2335.05, Revised Code, might also be considered in the instant question. That section reads:

“In all cases or proceedings not specified in sections 2335.06 and 2335.08 of the Revised Code, each person subpoenaed as a witness shall be allowed one dollar for each day’s attendance and the mileage allowed in courts of record. When not subpoenaed each person called upon to testify in a case or proceeding shall receive twenty-five cents. Such fee shall be taxed in the bill of costs, and if incurred in a state or ordinance case, or in a proceeding before a public officer, board, or commission, the fee shall be paid out of the proper public treasury, upon the certificate of the court, officer, board, or commission conducting the proceeding.”

I do not consider Section 2335.05, *supra*, to be applicable to the present instance, however, since under Section 143.07, *supra*, the fees of the witnesses in question are to be paid as are witnesses in civil cases under Section 2335.06, *supra*.

I thus conclude that witness fees and travel expenses of witnesses appearing before municipal civil service commissions, on subpoena, should be paid by the county treasurer.

Coming to the second question, the pertinent language of Section 143.07, *supra*, provides:

“* * * Fees shall be allowed to witnesses, and on their certificate, duly audited, shall be paid by * * * the county treasurer * * *.”

There is no specific indication as to what officer audits the fees. Under the language used, however, the civil service commission certifies the fees for payment, and payment is made by the county treasurer. Before the county treasurer may pay out money, however, he must have a proper order or voucher from the county auditor. In this regard, Section 319.16, Revised Code, provides:

“Except as to moneys due the state which shall be paid out upon the warrant of the auditor of state, the county auditor shall issue warrants on the county treasurer for all moneys payable from the county treasury, upon presentation of the proper order

or voucher for the moneys, and keep a record of all such warrants showing the number, date of issue, amount for which drawn, in whose favor, for what purpose, and on what fund. The auditor shall not issue a warrant for the payment of any claim against the county, unless it is allowed by the board of county commissioners, except where the amount due is fixed by law or is allowed by an officer or tribunal so authorized by law.”

Before submitting an order or voucher for the payment of money, the county auditor must, of course, ascertain that such payment is proper. In determining whether particular witness fees should be paid under Section 143.07, *supra*, the county auditor would thus audit said fees.

I might note that my predecessor in Opinion No. 1619, *supra*, while not ruling directly on the question, apparently was of the same mind as to what officer should make the audit. At page 925 of that opinion he said:

“From the facts stated in your foregoing letter it appears that the municipal civil service commission subpoenaed the witnesses in question at the request of the parties and that it thereafter certified their fees to the county auditor. It follows, therefore, that when such fees are duly audited they become and are payable out of the county treasury.”

Accordingly, I am of the opinion that the witness fees should be certified to the county auditor who should then audit them before issuing an order or voucher to the county treasurer for their payment.

In conclusion, it is my opinion and you are advised:

1. Under Section 143.07, Revised Code, fees of witnesses subpoenaed by a municipal civil service commission in a hearing before it, when the same are duly certified by the commission and audited, are payable out of the county treasury.

2. Such fees should be certified by the commission to the county auditor who should audit the same before issuing an order or voucher under Section 319.16, Revised Code, to the county treasurer for their payment.

Respectfully,
MARK MCELROY
Attorney General