

497.

APPROVAL, NOTES OF SCHOOL DISTRICTS IN ASHTABULA, BROWN,
CLERMONT, HOCKING, NOBLE AND TRUMBULL COUNTIES.

COLUMBUS, OHIO, May 16, 1927.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.

498.

PROBATE COURT—SECTION 1981, GENERAL CODE, CONSTRUED—
FEES OF PHYSICIANS.

SYLLABUS:

Under the provisions of Section 1981, General Code, the two physicians designated by the probate court to make the examination are each entitled to the fee of five dollars and witness fees as allowed in the court of common pleas irrespective of whether the patient is adjudged insane or is not adjudged insane.

COLUMBUS, OHIO, May 17, 1927.

HON. JOHN E. HARPER, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

“In the law governing hearings in insanity cases, Section 1954, G. C., provides that the Probate Judge following the filing of the affidavit and the issuance of a warrant for bringing the alleged insane person into court shall immediately ‘issue subpoenas for such witnesses as he deems necessary, two of whom shall be reputable physicians.’

Section 1956 further provides that—‘upon the hearing of the testimony, if he is satisfied that the person charged is insane, he shall cause a certificate to be made out by two medical witnesses in attendance that the person is insane to the best of their knowledge and belief.’

The medical certificate contemplated by this section is prepared by the physicians on forms prescribed by this Department.

Section 1981, G. C., provides for the record, fees, costs and expenses in lunacy cases, and states ‘* * * to each of two physicians designated by the court to make the examination, \$5.00 and witness fees as allowed in the court of common pleas, to be paid upon the certificate of the probate judge.’

We respectfully request your opinion on this question:

Are the two physicians designated by the Probate Court to make the examination entitled to the fee of \$5.00 and witness fee irrespective of whether the accused is adjudged insane or is not adjudged insane.

An opinion was rendered by the Attorney General on July 2, 1920,

(No. 1392, Vol. I, 1920, page 733) to the effect that physicians called as witnesses are entitled only to the regular witness fee of \$1.00 and not to the \$5.00 fee if the accused is found to be sane. This opinion is apparently based upon a confusion in the meaning of the word 'certificate' as used in Section 1956 and the words 'to be paid upon the certificate of the probate judge' as used in Section 1981. As we read Section 1981 'the certificate of the probate judge' means the certificate to the County Treasurer that the account is payable, and has no reference to the medical certificate referred to in Section 1956.

A review of the previous opinion rendered on this subject and your decision will be greatly appreciated."

Your inquiry involves a construction of Section 1956 and 1981 of the General Code. Section 1956 reads as follows:

"Unless for good cause the investigation is adjourned, the judge, at the time appointed, shall proceed to examine the witnesses in attendance. Upon the hearing of the testimony, if he is satisfied that the person charged is insane, he shall cause a certificate to be made out by two medical witnesses in attendance that the person is insane to the best of their knowledge and belief. The medical witnesses must have at least five years' experience in the practice of medicine, shall not be related, by blood or marriage, to the person alleged to be insane or to the person making the application for commitment, nor have any official connection with any state hospital. The medical certificate shall contain answers to such interrogatories as the Ohio board of administration, with the advice of the superintendents of the several hospitals, prescribes."

Section 1981 reads as follows:

"The probate judge shall make a complete record of all proceedings in lunacy. The costs and expenses to be paid under the provisions of this chapter, shall be as follows: to the suitable person, other than the sheriff or his deputies, for making the arrest, the same fees allowed constables, to be paid upon the certificate of the probate judge; to each of two physicians designated by the court to make the examination, five dollars and witness fees as allowed in the court of common pleas, to be paid upon the certificate of the probate judge; * * *"

You call attention to an opinion of this department found in Opinions of the Attorney General, 1920, Vol. I, page 733, construing said above numbered sections, the syllabus of which reads as follows:

"1. Under Sections 1956 and 1981, as amended in House Bill 294, the two physicians designated by the probate court to make the examination and certificate required, are entitled to a fee of \$5.00 when the person proceeded against is adjudged to be insane and are not entitled to such fee when such person is not adjudged to be insane.

2. Physicians called as witnesses in such case when the person is not adjudged insane, are entitled to witness fees of \$1.00 for each day's attendance and the mileage provided for in Section 3011, G. C.

3. The words 'in full for all services rendered' refer to and include all of the services rendered by such physician in such case and the physician

is not entitled to the \$1.00 per day witness fee in addition to the \$5.00 fee provided in Section 1981."

It is stated in said opinion that :

"Section 1981, before the amendment in House Bill 294 (108 Ohio Laws, Part II, page 1203), among other provisions fixing fees and costs in lunacy cases provided that there should be paid 'to each of the two physicians designated by the Court to make examination and certificate \$5.00, and witness fees as allowed in the court of common pleas.'"

It is then stated in said opinion that Section 1981, was amended (108 Ohio Laws, Part II, page 1203,) to read as follows :

"To each of the two physicians designated by the court to make examination and certificate \$5.00 in full for all services rendered."

In commenting upon the provision of said Section 1981 said opinion states :

"It must be noted here that the examination and certificate referred to in Section 1956 and 1981 are made only when the probate court 'is satisfied that the person so charged is insane.' When the person is adjudged to be not insane obviously the certificate that 'the person is insane to the best of their knowledge and belief,' required by Section 1956 would not be made."

I call your attention, however, to the fact that Section 1981, was again amended, 109 Ohio Laws, page 173, and became effective in May 1921. As amended, Section 1981, now reads :

"* * * to each of two physicians designated by the court to make the examination, five dollars and witness fees as allowed in the court of common pleas, to be paid upon the certificate of the probate judge; * * * "

It is noted that no mention is made of the making of the medical certificate in Section 1981 as it now reads, but that the two physicians designated by the court to make the examination are each to receive five dollars and witness fees as allowed in the court of common pleas. Said examination fee and witness fee is now payable to each of the two physicians designated by the court whether the patient is found to be sane or insane.

It is therefore my opinion that under the provisions of Section 1981, General Code, the two physicians designated by the probate court to make the examination are each entitled to the fee of five dollars and witness fees as allowed in the court of common pleas irrespective of whether the patient is adjudged insane or is not adjudged insane.

Respectfully,
EDWARD C. TURNER,
Attorney General.