

bond of the ----- library" (naming the one to provide and furnish buildings for which they are issued)."

Although boards of library trustees do not have the power to levy taxes by virtue of the provisions of the above section, they do have the power to issue bonds to provide buildings for the public library in their charge, and to furnish them. It seems clear, therefore, that such boards of library trustees come within the definition of "taxing unit," as set out in Section 5625-1 (i), General Code, and that before a contract can be entered into for the construction of new buildings for branch libraries for the Cleveland Public Library, the fiscal officer's certificate specified in Section 5625-33, General Code, must be obtained.

It is therefore my opinion that before a contract or contracts may be entered into for the construction of new branch libraries of the Cleveland Public Library, it will be necessary to request and obtain the certificate of the fiscal officer to the effect that the amount required to meet the same has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of the appropriate fund, free from any previous encumbrances.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1194.

COUNTY CORONER—REPORTS—SALARY OF SECRETARY AND CUSTODIANS OF MORGUE—SALARY OF CORONERS IN COUNTIES OF 400,000 OR MORE—INCAPACITATION OF CORONER IN SUCH COUNTIES—APPOINTMENT OF PERSONS TO PERFORM CORONER'S DUTIES.

SYLLABUS:

1. *The period to be covered by the reports of a coroner as provided to be made by Section 2856-5, General Code, is the year next preceding the first Monday in September of each year.*

2. *A county coroner is authorized to fix the salary of his stenographer-secretary and the custodians of the county morgue from and after August 1, 1927.*

3. *Coroners who have been duly elected and have qualified, and entered upon their duties in counties of 400,000 or more, are entitled to their salary during the time for which they have title to the office, whether or not they are able to, and do perform the duties of the office.*

4. *Coroners in counties of 400,000 or more are entitled to their salary during the time they are temporarily unable to perform the duties of the office, by reason of absence from the county on account of illness or other causes.*

5. *Appointments of persons to perform the duties of county coroners during the time of such coroner's absence from the county, or inability from sickness or other causes to discharge the duties of his office, continue only for the period of such disability and if after such disability the duly elected and qualified coroner resumes the duties of his office and again becomes temporarily disabled to perform the duties of his office, or is absent from the county, another appointment should be made and such appointee is required to qualify for the performance of the duties incident to such appointment by giving bond and taking*

oath of office, even though he be the same person that had previously been appointed to fill a temporary vacancy in the same position, and had previously given a bond and taken an oath of office.

6. *County coroners have no authority to conduct post-mortem examinations in their official capacity at the instance of the friends or relatives of a deceased person, and therefore can not as coroner accept fees from the friends or relatives of a deceased person for the conducting of post-mortem examinations. There is nothing in the law to prevent the person occupying the position of coroner, from performing an autopsy in his private capacity and receiving pay therefor, which he may retain, providing he complies with the law and rules of the board of health respecting the disinterring of human bodies, and provided he in no wise makes use of his official powers as coroner.*

COLUMBUS, OHIO, October 24, 1927.

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

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

“We respectfully request your written opinion upon the following questions relating to the provisions of House Bill No. 485 enacted at the recent session of the General Assembly.

Section 2856-3 provides that coroners in such counties, referring to counties having a population of over 400,000, shall report to the county commissioners on the first Monday of September each year a statement of the amount of fees collected during the same period.

Question 1. What period is to be covered by this report?

Section 2856-2 provides that in counties having a population of 100,000 or more, the coroner may appoint an official stenographer-secretary and also in counties where a county morgue is maintained, he may appoint assistant custodians of the morgue. Section 2856-2a provides that the stenographer-secretary and the custodian shall receive salaries fixed by the coroner and payable from the county treasury, the total of such salaries not to exceed in the aggregate for the coroner's office, the amount fixed by the county commissioners. Prior to the passage of this act the law fixed the salary of the stenographer-secretary and of the assistant custodian for the morgue, the former at \$150.00 per month and the latter at \$125.00.

Question 2. May the coroner fix the salaries of the stenographer-secretary and the custodians of the morgue from August 1st, the effective date of the act, until the end of his official year, the first Monday in January, 1928?

Question 3. May the coroner in counties of 400,000 or more receive the salary provided in this act if he is continually absent from the county or is disabled from performing any of the duties of his office?

Question 4. In counties of 400,000 or more, may the elected coroner receive a salary for the same time in which the appointed coroner performs the duties of coroner?

Question 5. When an appointment is made to fill a temporary vacancy in the office of coroner and the person appointed qualifies as required by law, can such person act as coroner on occasions of subsequent disability or absence of the coroner, without again being appointed, giving bond and taking oath of office?

Question 6. It sometimes occurs that the friends of a deceased person request a post mortem examination by the coroner, in such cases when the post mortem examination is not authorized by the prosecuting attorney, should any fee received by the coroner, from the friends of the deceased, for his services in making such post mortem be paid into the county treasury?"

As enacted in House Bill No. 485 of the 87th General Assembly, 112 O. L. 204, Sections 2829, 2856-2, 2856-2a, 2856-5 and 2856-5a read as follows:

Sec. 2829. "When the office of coroner becomes vacant, the county commissioners shall appoint a suitable person to fill the vacancy, who shall give bond and take the oath of office as prescribed for the coroner."

Sec. 2856-2. "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. * * *

In counties where there is maintained a county morgue, the coroner may also appoint necessary assistant custodians of the morgue, in no case to exceed three in number * * *"

Sec. 2856-2a. "For the performance of such duties the stenographer-secretary and assistant custodian shall receive salaries fixed by the coroner and payable from the county treasury upon the warrant of the county auditor. Such compensation shall not exceed in the aggregate for the coroner's office the amount fixed by the county commissioners for such office."

Sec. 2856-5. "In counties having a population, according to the last federal census, of four hundred thousand or more the coroner shall pay over to the county treasury of said county all fees, to which he shall be entitled under all sections of the General Code, forthwith upon receipt of same.

All coroners in such counties shall report to the county commissioners on the first Monday in September each year a certified statement of the amount of all fees collected during the same period, naming the party or parties to each case together with a statement of the amount of funds paid by him pursuant to law into the county treasury naming the source from which such funds were derived."

Sec. 2856-5a. "In all counties having a population, according to the last federal census, of less than four hundred thousand the coroner of each such county shall report to the county commissioners on the first Monday of September of each year a certified statement of the amount of fees collected by him, under all sections of the General Code, during year next preceding the time of making such statement, naming the party or parties to each case."

1. It will be observed that Section 2856-5, supra, wherein it provides for the making of reports by coroners in counties having a population of 400,000 or more requires that such reports be made on the first Monday in September of each year showing the amount of fees collected "during the *same period*," while Section 2856-5a, General Code, provides that reports of coroners in counties of less than 400,000 shall be made on the first Monday of September of each year for the *year next preceding the time of making such statements*. It was held in Opinion No. 1057, rendered on September 26, 1927, and addressed to your Bureau, that the expression the "year next preceding the time of making of the statement" as used in Section 2856-5a means the year immediately preceding the first Monday of September.

From the context, there is nothing to indicate to what the words "during the same period" used in Section 2856-5a, supra, refer, unless it might be said that they refer to the preceding section, which provides that in counties of 400,000 or more, the coroner shall be paid a salary of six thousand dollars *per annum*. It would seem, however, that the legislature did not intend that reports, in so far as the time they were to cover was concerned, should be different in one county than in another. There is no reason for the reports in counties with a population of 400,000 or more to be made for a different period than in counties of a lesser population. Simply because in the one case the coroner is paid a salary, and in the other he is compensated by fees would make no difference, as the time covered by reports in the smaller counties has no relation to the time for which the computation is made of the aggregate amount of fees which such coroner may be paid, nor does the report made by the coroner in the larger counties have any bearing on the salary of the coroner.

There is no reason to assume that the words "during the same period" refer to any particular period and in trying to determine the intent of the legislature it would seem a reasonable conjecture at least, to say that these words mean the same period provided in the succeeding supplemental section making specific provision for the filing of reports in the smaller counties. Apparently that was what was in the mind of the General Assembly when the section was enacted.

2. Prior to the effective date of House Bill No. 485, Section 2856-2, General Code, fixed the salary of the coroner's stenographer-secretary and the assistant custodians of the county morgue at \$150 and \$125 per month, respectively. Section 2856-2 General Code was not specifically repealed by House Bill No. 485, supra, but in so far as its provisions conflict therewith, it is repealed by implication by amended Section 2856-2, General Code, as enacted in said House Bill No. 485, which provides that the salaries of the coroner's stenographer-secretary and assistant custodians of the morgue shall be fixed by the coroner.

The incumbents of the position of stenographer-secretary to the coroner and assistant custodian of the county morgue are not public officers and their salaries are not therefore subject to the constitutional inhibition against the changing of the officer's salary during his term of office. The effective date of House Bill No. 485 being August 1, 1927, the fixing of the salary for the stenographer-secretary to the coroner and assistant custodians of the county morgue would be subject to the control of the coroner from that date. In *Throop on Public Officers*, Section 443, it is stated:

"It has been often held, that an officer's right to his compensation does not grow out of a contract between him and the state, or the municipality by which it is payable. The compensation belongs to the officer, as an incident of his office, and he is entitled to it, not by force of any contract, but because the law attaches it to the office; and although, during the time for which he claims it, he has earned money in other employment. * * **"

Ruling Case Law, Vol. 22, page 529 reads as follows:

"The right of an officer to his fees, emoluments, or salary is not impaired by his occasional or protracted absence from his post, or even by his neglect of duty, or failure to perform substantial services. Accordingly it has been held that the mayor of a city is entitled to his salary during his temporary absence from his post of duty, although the city charter provides that during the absence of the mayor from the city another city officer shall act as mayor and shall 'receive the same compensation as the mayor.' The same is true of an absence granted on account of illness. If there is no provision directing a deduction from the salary no such deduction will be made. * * **"

Again, in Ruling Case Law, Vol. 22, page 525, it is said:

“It is a well established principle that a salary pertaining to an office is an incident of the office itself, and not to its occupation and exercise * * *. Nor does the compensation constitute any part of the office. Yet the right to a public office carries with it the right to any emoluments which may pertain to it, and to the person legally holding the office belong the perquisites and emoluments attached by law to the office, as fully as does the office itself. * * *”

3, 4 and 5. With reference to the question of the right of an officer to receive his fixed compensation without deduction, Throop on Public Officers in section 500, says:

“The general rule applicable to this class of cases, is well stated in a case in the common pleas of the city and county of New York, in the following language: ‘The right of an officer to his fees, emoluments, or salary, is such only as is prescribed by statute; and while he holds the office, such right is in no way impaired by his occasional or protracted absence from his post, or neglect of his duties. Such derelictions find their corrections in the power of removal, impeachment, and punishment, provided by law. The compensations for official services are not fixed upon any mere principle of a quantum meruit, but upon the judgment and consideration of the legislature, as a just medium for the services which the officer may be called upon to perform * * .’”
People vs. Green, 5 Daly (N. Y.), 254.

An examination of the many reported cases on this subject leads to the conclusion that the right to receive salary attached to an office is an incident to the title of the office, and not to the exercise of the duties incident to the office. See *Elliott vs. Dellinger*, 247 Pac. 523; *Cunio vs. Franklin County*, 285 S. W. 1007; *Bryan vs. Cattell*, 15 Ia. 538.

Provision is made by the terms of Section 2829, supra, for the filling of the vacancy by permanent appointment when the office of coroner becomes vacant by the death, resignation, expiration of term of office or otherwise, and of making appointments temporarily to provide for the performance of the duties which the coroner is charged by law with performing when he is absent from the county or unable from sickness or other causes to discharge the duties of his office. In either event, the person appointed is required to give bond and take the oath of office as prescribed for the coroner although the temporary inability of an officer to perform the duties of his office by reason of absence, sickness, or otherwise, can not be said to create a vacancy in a strict legal sense. Yet as the word is used in Section 2829, supra, it is apparent that the legislature meant by the use of the word “vacancy” to describe a situation where there was temporary inability on the part of the coroner to perform his duties as well as when the office really became vacant through death, resignation, expiration of term of office or otherwise.

When an appointment is made to take care of the situation when the coroner is incapacitated by reason of his temporary inability to perform the duties of his office, such appointee should be compensated by the payment to him not of the coroner’s salary or compensation, but an amount equal to that allowed by law to the coroner as stated in the statute, (Section 2829, supra). If the coroner is on a salary, he would continue to draw that salary so long as he had title to the office, even though he was temporarily unable to perform the duties of the office. In counties of less than 400,000 population where the coroner is compensated by fees earned, he of course would not get the fees unless he performed the services for which the fees were to be allowed.

When such temporary appointment is made the appointee would of course only continue until the duly elected and qualified coroner returned to the performance of his duties, and if the coroner later again became incapacitated because of absence from the county from sickness or through other causes, a new appointment would necessarily have to be made and the new appointee, whether he be the same person that had been appointed before or not, would have to qualify by giving bond and taking the oath of office as before.

6. There is no authority for a coroner as such to conduct any investigation when the dead body of a person has been found within the county other than that authorized by Section 2856, General Code, an examination of which discloses that whatever he does is done not at the instance of, or for the benefit of the relatives or friends of the deceased, but for the public, in the furtherance of investigation and suppression of crime

Literally, post-mortem means after death, and in a broad sense means more than an autopsy. You speak in your inquiry of the friends requesting a post-mortem examination. A post-mortem examination of the body, if it went into the question of the causes of death, would practically be an autopsy, which is defined by Webster as:

“Dissection of a dead body for the purpose of ascertaining the cause, seat or nature of a disease; a post-mortem examination.”

A post-mortem examination in a broad sense means not only an autopsy but an examination into the circumstances of the death and all the facts that might throw light on the cause of death. The coroner as a public official is not authorized to make such an examination except as permitted by statute. He has no authority to conduct such an investigation at the instance of friends or relatives and consequently could never legally receive any fees from such friends or relatives for the making of a post-mortem examination. Of course the dead body of a person, whether he came to his death by violence or otherwise belongs to his next of kin and may be disposed of by them as they see fit, subject of course to lawful regulations and whatever use the authorities may require of said body in the investigating into the causes of death. In most counties the coroner is a practicing physician and if the friends or relatives desire for their own satisfaction, the coroner in his capacity as a physician to make some post-mortem investigation, whether by way of examination of the body or not, there is nothing to prevent the person occupying the position of coroner from conducting such investigation and accepting pay therefor for which he would not need to account to the county, but in doing so he would be acting in a private capacity and would be required to comply with the law and all the rules of the board of health respecting the disinterring of human bodies and their disposal nor could he make use of his position as coroner to compel the attendance of witnesses or the production of evidence.

Specifically answering your questions, I am of the opinion:

1. The period to be covered by the reports of a coroner as provided to be made by Section 2856-5, General Code, is the year next preceding the first Monday in September of each year.

2. A county coroner is authorized to fix the salary of his stenographer-secretary and the custodians of the county morgue from and after August 1, 1927.

3. Coroners who have been duly elected and have qualified, and entered upon their duties in counties of 400,000 or more, are entitled to their salary during the time for which they have title to the office, whether or not they are able to, and do perform the duties of the office.

4. Coroners in counties of 400,000 or more are entitled to their salary during the time they are temporarily unable to perform the duties of the office by reason of absence from the county on account of illness or other causes.

5. Appointments of persons to perform the duties of county coroners during the time of such coroner's absence from the county, or inability from sickness or other causes to discharge the duties of his office, continue only for the period of such disability, and if after such disability the duly elected and qualified coroner resumes the duties of his office and again becomes temporarily disabled to perform the duties of his office, or is absent from the county, another appointment should be made, and such appointee is required to qualify for the performance of the duties incident to such appointment by giving bond and taking oath of office, even though he be the same person that had previously been appointed to fill a temporary vacancy in the same position and had previously given a bond and taken an oath of office.

6. County coroners have no authority to conduct post-mortem examinations in their official capacity at the instance of the friends or relatives of a deceased person, and therefore can not as coroner accept fees from the friends or relatives of a deceased person for the conducting of post-mortem examinations. There is nothing in the law to prevent the person occupying the position of coroner, from performing an autopsy in his private capacity and receiving pay therefor, which he may retain, providing he complies with the law and rules of the board of health respecting the disintering of human bodies, and provided he in no wise makes use of his official powers as coroner.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1195.

APPROVAL, BONDS OF AMANDA TOWNSHIP, HANCOCK COUNTY—
\$4,550.00.

COLUMBUS, OHIO, October 24, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

1196.

INSOLVENT DEBTORS' ACT—APPLICATION BY PERSON IMPRISONED
FOR PERIOD OF SIXTY DAYS FOR NONPAYMENT OF FINES—CON-
CURRENT SENTENCES.

SYLLABUS:

1. *An insolvent person who has been sentenced to pay a fine and ordered to remain imprisoned in jail until such fine and the costs be paid, or secured to be paid, or until he is otherwise legally discharged, and who is imprisoned in a county jail under such sentence is entitled to the benefit of the insolvent debtors' act (Sections 11146, et seq., General Code), after such prisoner has been imprisoned thereunder for the period of sixty days.*