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EXPENSE ALLOWANCES—BAILIFF, PROBATION OFFICER OR EMPLOYEE UNDER §2151.13 R.C.—JUVENILE JUDGE MAY FIX SUCH ALLOWANCE FOR PERIODIC PAYMENT BUT SUCH PAYMENTS MAY NEVER EXCEED THE ACTUAL COMPENSABLE EXPENSES IN THAT PERIOD.

SYLLABUS:

A juvenile judge, acting under the provisions of Section 2151.13, Revised Code, may fix as the expense allowance of a bailiff, probation officer, or other employee appointed under that section a fixed sum to be paid periodically, provided that the amount paid shall never exceed the amount of actual compensable expense incurred in that period.

Columbus, Ohio, June 10, 1958

Hon. Robert O. Stout, Prosecuting Attorney  
Marion County, Marion, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Our Juvenile Judge has requested that I secure your interpretation and opinion with respect to the provisions of Revised Code Section 2151.13, which provides: ‘The Juvenile Judge may appoint such bailiffs, probation officers and other employees as are necessary and may designate their titles, fix their duties, compensation, and *expense allowances*. . .’

“Briefly, the facts are: The Juvenile Court has two probation officers — one for boys and one for girls. The Court has further fixed the compensation for each officer, and in addition,

has fixed an expense allowance of a flat fifty dollars (\$50.00) per month, for each officer, this expense allowance to cover the operation of their automobile, their meals and other incidental expenses while away from this County. The question has been raised by the Bureau of Inspection and Supervision as to the illegality or irregularity of such flat sums for expense allowances. These probation officers are not furnished automobiles by the County Commissioners for use in their work, and hence must use their personal motor vehicles for their duties. Considerable usage of said vehicles is incurred in County work in connection with their duties. A statement setting forth the automobile and other travel expenses incurred by the probation officers during the time that this flat monthly allowance has been in effect reveals that the gross expenses of the probation officers are in excess of the fixed monthly allowance. Included in said statement are items of automobile insurance, depreciation, finance charges necessary to the acquisition of said automobile, as well as the other expenses incident to the operation of said vehicle and their travel from Marion County.

"We are mindful of the following cases and citations: 66 Ohio State, page 108, 149 Ohio State, page 555, 1950 Ohio Attorney General Opinions No. 2187 and 1952 Ohio Attorney General Opinions No. 1126. We submit that those citations do not involve the problem where a statute sets forth the specific authority as set forth in Revised Code 2151.13.

"Reference is also made to 1957 Ohio Attorney General Opinion No. 736.

"The above referred to statute, R.C. 2151.13, would appear to vest the exercise of reasonable discretion within the Juvenile Judge. In line with our case law, it would appear that where the legislature has placed a matter within the discretion of the Court, the exercise of that discretion by the Court will not be reversed except where there has been an abuse of such exercise of the discretion. Your opinion is sought on the following queries:

"(1) In view of Revised Code 2151.13, may the Juvenile Judge, exercising reasonable discretion, fix a flat monthly expense allowance for his probation officers without regard to the principle set forth in your prior opinions that a flat allowance may not exceed the actual expenditures, where said opinions did not concern themselves with a specific statutory grant of power as set forth in this section.

"(2) If the answer to '1' is 'no', may the Judge fix a flat monthly allowance, so long as it does not exceed the actual expenses.

"(3) In any determination of actual expenses in the operation of a motor vehicle, are such items as automobile insurance,

liability insurance, depreciation and finance charges in connection with said automobile, pertinent items of such expenditures. To us it would appear that such items are proper inasmuch as any mileage allowance of so many cents per mile is to cover those very items.

“(4) Assuming that a Juvenile Judge is governed by the principles set forth in prior attorney general opinions, i.e. that no flat monthly allowance may exceed the actual expenditures, should the Bureau of Inspection and Supervision make any finding of illegality or of irregularity until they have determined that said actual expenditures do not exceed the fixed allowance.”

Section 2151.13, Revised Code, reads in pertinent part as follows:

“The juvenile judge may appoint such bailiffs, probation officers, and other employees as are necessary and may designate their titles and fix their duties, compensation, and expense allowances. The juvenile court may by entry on its journal authorize any deputy clerk to administer oaths when necessary in the discharge of his duties. Such employees shall serve during the pleasure of the judge.

“The compensation and expenses of all employees and the salary and expenses of the judge shall be paid in semimonthly installments by the county treasurer from the money appropriated for the operation of the court, upon the warrant of the county auditor, certified to by the judge.”

With regard to the first of your four enumerated questions, it is my opinion that a statute authorizing the payment of the expenses of public officers cannot be construed to authorize the payment of an expense allowance which may exceed actual expenses incurred. You are undoubtedly familiar with the following language, being the second paragraph of the syllabus in the case of *State, ex rel. Leis v. Ferguson*, 149 Ohio St., 555:

“Statutes relating to compensation and allowances of public officers are to be strictly construed, and such officers are entitled to no more than that clearly given thereby.”

In Opinion No. 736, Opinions of the Attorney General for 1957, p. 272, I said at page 273:

“Regardless of the *method* of payment adopted, payment may never exceed the amount of actual expense. If \* \* \* the method of payment is at a flat rate based on average monthly expense, the rate must be set so that the amount paid will not exceed actual expense. The flat rate may be regarded as a maximum

amount. When in any case the actual expense does not equal the flat rate then only the amount of actual expense may be paid.

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While it is true that that opinion dealt with a case in which payment of expenses was not specifically authorized by statute, I am convinced that the same principle must apply here. I do not think that the language of Section 2151.13, Revised Code, permits an exception to that general principle. On the contrary, it seems to me that the use of the words "may \* \* \* fix \* \* \* expense allowances," specifically recognizes that the maximum amount which the designated officers may receive may be so fixed that their actual expenses will never be met. I am unable to see how this language could be interpreted so as to authorize payment of an amount in excess of actual expenses or an amount which might in some cases exceed actual expenses.

In your request you mention the fact that this matter is by statute placed within the discretion of the juvenile judge. While I accord all due respect to the exercise of such discretion, I submit that in this matter the judge is exercising, not judicial discretion, but administrative discretion, which is subject to review as such. In any case, the exercise of discretion is limited by law.

In my opinion the answer to your first question must be in the negative.

Referring again to what has been said above, the answer to your second question is in the affirmative. In this connection it is of importance to note that there must be a method by which actual expenses may be determined. This necessitates the filing of an expense account with the juvenile judge, listing the specific items and amounts of expense.

As to your third question, I am unable to state, except in very general terms, a rule as to what specific items of expense are or are not compensable in these cases. Obviously only expenses properly attributable to the performance of a necessary public duty are compensable. Each item involves a separate factual determination. I will observe that I am somewhat disturbed by your suggestion that finance charges may be considered as compensable. I am unable to see how such charges constitute an expense attributable to a public duty. In the absence of specific facts, however, I am unable to express a firm opinion. This is, of course, an area for the exercise of discretion.

Having said that payment of a flat monthly allowance is lawful providing it does not exceed actual compensable expenses incurred, it follows in my opinion that the Bureau of Inspection and Supervision of Public Offices should not make a finding that payment of such a flat monthly allowance is unlawful without a prior determination that actual compensable expenditures of such employees do not equal or exceed such fixed allowance.

It is my opinion, and you are advised that a juvenile judge, acting under the provisions of Section 2151.13, Revised Code, may fix as the expense allowance of a bailiff, probation officer, or other employee appointed under that section a fixed sum to be paid periodically, provided that the amount paid shall never exceed the amount of actual compensable expense incurred in that period.

Respectfully,  
WILLIAM SAXBE  
Attorney General