

OPINION NO. 73-130**Syllabus:**

A board of county commissioners may not compensate a deputy coroner on a fee basis for official autopsies performed by him at the instance of the coroner. (Opinion No. 1153, Opinions of the Attorney General for 1960, approved and followed)

To: John E. Moyer, Erie County Pros. Atty., Sandusky, Ohio
By: William J. Brown, Attorney General, December 18, 1973

I have before me your request for my opinion, which poses the following question:

May a board of county commissioners lawfully compensate a pathologist, who is serving as deputy coroner by appointment under the authority of R.C. 313.05, on a fee basis under the authority of R.C. 307.60 (or any other statutory authority) for official autopsies performed by him at the instance of the coroner?

R.C. 313.05, which provides for the appointment of deputy and assistant coroners, reads as follows:

The coroner may appoint, in writing, assistant coroners who shall be licensed physicians of good standing in their profession, one of whom may be designated as the chief deputy coroner. Such coroner may also appoint pathologists as assistant coroners, who shall assist in doing autopsies, make pathological and chemical examinations, and perform such other duties as are directed by the coroner or recommended by the prosecuting attorney. The coroner may appoint any necessary technicians.

The coroner may appoint, in writing, a secretary and an official stenographer who shall record the testimony of witnesses in attendance upon the coroner's inquest, preserve and file properly indexed records of all official reports, acts, and communications of the office, and perform such other services as are required by the coroner.

In counties where a coroner's office, laboratory, and a county morgue is maintained, the coroner may appoint

clerks, stenographers, custodians, and investigators, and shall define their duties.

For the performance of their duties the deputy coroner, assistant coroners, pathologists, stenographers, secretary, clerks, custodians, and investigators 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 board of county commissioners for such office. (Emphasis added.)

This Section states that deputy and assistant coroners shall receive salaries fixed by the coroner as compensation for the performance of their duties. One of my predecessors, in Opinion No. 1153, Opinions of the Attorney General for 1960, concluded that, based on R.C. 313.05, an assistant coroner could not be paid on a fee basis. He stated, in branch two of the syllabus, as follows:

Section 313.05, Revised Code, provides that each assistant coroner be paid a salary for the performance of his duties and payment of an assistant coroner on the basis of official autopsies performed by him is not authorized by law.

Opinion No. 1153, *supra*, would appear to be conclusive as to your question; however, my predecessor failed to consider the effect, if any, of R.C. 307.60 upon the question before him. Thus I will attempt to determine whether R.C. 307.60, or any other Section of the Revised Code, contains an exception to the provisions of R.C. 313.05. R.C. 307.60 reads as follows:

The board of county commissioners may allow a physician or surgeon making a post mortem examination at the instance of the coroner or other officer such compensation as it deems proper.

This Section was originally enacted as R.S. 1305 in 1876. 73 Ohio Laws 127, 136. For many years it was important because prior to 1945 persons were not required to be physicians to be eligible to the office of coroner. See G.C. 2856-3; 109 Ohio Laws 543 (1921); 117 Ohio Laws 43 (1937). Thus when an autopsy was required, the coroner or the prosecuting attorney would appoint a physician to perform the autopsy, and R.S. 1305 and its successors provided for the compensation of such physician.

Under G.C. 2856 the prosecuting attorney was required to authorize all autopsies. However, G.C. 2856 was repealed by the legislature in the same bill which enacted what was to become R.C. 313.05 (121 Ohio Laws 591 (1945)). Since 1945 all coroners must be qualified physicians, and only a coroner, deputy coroner, or pathologist may perform an autopsy. 121 Ohio Laws 591 (1945). Since R.C. 313.05 grants no authority to a coroner to appoint qualified individuals to perform individual autopsies, and I have found no other statute which grants that authority to a coroner or any other officer I must conclude that a coroner has no such authority. Thus, although R.C. 307.60 is still in effect, it has no effect because neither a coroner nor any other officer is empowered by statute to authorize a qualified person, who is not a deputy or assistant coroner, to perform individual autopsies.

In specific answer to your question, it is my opinion and you

are so advised, that a board of county commissioners may not compensate a deputy coroner on a fee basis for official autopsies performed by him at the instance of the coroner. (Opinion No. 1153, Opinions of the Attorney General for 1960, approved and followed)