

against the liquor laws, where such inspectors are at the same time receiving their salaries and expenses for their time and services as such inspectors."

In a recent opinion of this department, rendered to the Director of Health, being Opinion No. 555, rendered July 5, 1923, it was held:

An employe of the state attending a trial in line of his duty cannot receive mileage and also be paid his traveling expenses from the state. In the event mileage is collected it should be applied to such expenses."

From the foregoing, it will be seen that if the attendance of a witness is in the line of his duty, such witness is not entitled to attendance fee. Section 486-7, General Code of Ohio, makes such attendance in line with the duty of officers under the civil service.

A question which suggests itself is whether a person under civil service is entitled to receive mileage for such attendance. It is believed that the same rule of construction would apply in regard to mileage as is applicable to the attendance fee.

As it is a part of the duty of a person under civil service to attend when summoned by the civil service commission, such person is entitled to his actual and necessary expenses to be paid from the traveling fund of the department to which he is attached.

It is therefore my opinion that the State Civil Service Commission may not pay a per diem attendance fee or mileage to state, county or municipal employes, or elective officials, who are summoned under authority of section 486-7 to testify for such Commission.

Respectfully,  
C. C. CRABBE,  
*Attorney-General.*

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PROSECUTING ATTORNEY—MAY EMPLOY SPECIAL OFFICER TO ENFORCE TRAFFIC LAWS IF NO SECRET SERVICE OFFICER HAS BEEN APPOINTED—MAY HAVE BOTH IF REASONABLY NECESSARY.

*SYLLABUS:*

1. *The provisions of Section 7251 of the General Code do not preclude a prosecuting attorney from legally employing a special officer to enforce the traffic laws.*
2. *If no secret service officer has been appointed by such prosecuting attorney under the provisions of Section 2915-1 of the General Code, the allowance made to a prosecuting attorney under the provisions of Section 3004 of the General Code may be expended in the employment of a person to enforce the traffic laws.*
3. *If such secret service officer has been appointed, such expenditure may not be made unless the services of such person are reasonably necessary in addition to the services of such secret officer.*

COLUMBUS, OHIO, October 4, 1923.

*Bureau of Inspection and Supervision of Public Offices, Department of Auditor of State, Columbus, Ohio.*

GENTLEMEN:—I am in receipt of your recent communication, containing the following question:

"May a prosecuting attorney legally employ a special officer to enforce traffic laws and pay such officer out of the funds provided under Section 3004 G. C., or must such officer be appointed and paid in accordance with the provisions of Section 7251 G. C., 109 Ohio Laws, page 547?"

You direct attention to Section 7251 of the General Code (109 O. L. 549). This section is a part of an act which, in its amended form, was passed May 13, 1921, and is carried into the Code under Title 4, with the title heading of "Public Ways," and constitutes Chapter 9, with the chapter heading of "Traffic Regulations." This act fixes the maximum load and size of vehicles allowed upon the highways, and prescribes the width of tires, in relation to the load, permitted on motor vehicles, and otherwise regulates the use of the highways; the act further provides for the liability for damages to the highway, growing out of the violation of the act, and the collection thereof, as well as making the violation of its provisions a misdemeanor. The last paragraph of said section reads:

"The sheriff of any county is hereby authorized to detail one or more deputies for the special work of enforcing the provisions of this act for such periods of time and in such manner as he shall deem necessary; and the county commissioners of any county are hereby authorized to appropriate such amount of money, annually, from the road fund of such county as shall be deemed necessary to compensate such deputy or deputies for services rendered hereunder."

It will be noted that the provisions of the act relate to and cover, primarily, regulatory measures as to the make up, or size, of vehicle and weight of load only, and does not deal in any manner whatever with speed and other traffic regulations. Our statutes, generally, contain a great many other provisions relating to speed and other traffic regulations, such as are found in the chapter pertaining to "Offenses Against Public Safety" under the title heading of "Motor Vehicles," (Sections 12603 to 12628-1, both inclusive), and other sections.

It will be further noted that the provision of the paragraph of said Section 7251 of the General Code, above quoted, is,

"The sheriff of any county is hereby authorized to detail one or more deputies for the special work of enforcing the provisions of *this act* \* \* \*."

Your inquiry is,

"May a prosecuting attorney legally employ a special officer to enforce the traffic laws?"

The above provision of said Section 7251 of the General Code does not provide for the appointment of a special officer to enforce the traffic laws generally; by its terms, it limits the enforcement to the violation of the provisions of the particular act of which said Section 7251 is a part.

With this understanding of the legislative situation in relation to your question, your attention is directed to the specific provisions of Sections 2915-1 and 3004 of the General Code, under which sections it is believed that your question is answered in an opinion of a former Attorney General, to which reference is hereinafter made.

Section 2915-1 of the General Code reads:

"The prosecuting attorney may appoint a secret service officer whose duty it shall be to aid him in the collection and discovery of evidence to be used

in the trial of criminal cases and matters of a criminal nature. Such appointment shall be made for such term as the prosecuting attorney may deem advisable, and subject to termination at any time by such prosecuting attorney. The compensation of said officer shall be fixed by the judge of the court of common pleas of the county in which the appointment is made, or if there be more than one judge, by the judges of such court in such county in joint session, and shall not be less than one hundred and twenty-five dollars per month for the time actually occupied in such service nor more than one-half of the official salary of the prosecuting attorney for a year, payable monthly, out of the county fund, upon warrant of the county auditor."

The pertinent part of Section 3004, General Code, reads:

"There shall be allowed annually to the prosecuting attorney in addition to his salary and to the allowance provided by Section 2914, an amount equal to one-half the official salary, to provide for expenses which may be incurred by him in the performance of his official duties and in the furtherance of justice, not otherwise provided for. Upon the order of the prosecuting attorney, the county auditor shall draw his warrant on the county treasurer payable to the prosecuting attorney or such other person as the order designates, for such amount as the order requires, not exceeding the amount provided for herein, and to be paid out of the general fund of the county."

In the former opinion above referred to, and found in Opinions of the Attorney General for 1916, Vol. 2, p. 1453, it is held, as shown by the syllabus thereof:

"The allowance made to a prosecuting attorney under the provisions of Section 3004, General Code, may be expended in the employment of a person or persons to procure evidence against violators of the law regulating the speed of motor vehicles, said evidence to be used before a grand jury or in the prosecution of said offenders if no secret service officer has been appointed by said prosecuting attorney under the provisions of Section 2915-1, General Code, as amended in 103 O. L. 501. If such secret service officer has been appointed, said expenditure aforesaid may not be made unless the services of such persons are reasonably necessary in addition to the services of said secret service officer."

It would follow, in answer to your question:

1. That the provisions of Section 7251 of the General Code do not preclude a prosecuting attorney from legally employing a special officer to enforce the traffic laws.
2. If no secret service officer has been appointed by such prosecuting attorney under the provisions of Section 2915-1 of the General Code, the allowance made to a prosecuting attorney under the provisions of Section 3004 of the General Code may be expended in the employment of a person to enforce traffic laws.
3. If such secret service officer has been appointed, such expenditure may not be made unless the services of such persons are reasonably necessary in addition to the services of such secret service officer.

Respectfully,  
C. C. CRABBE,  
*Attorney-General.*