

59.

COUNTY COMMISSIONERS—HAVE FULL AUTHORITY TO FIX APPROPRIATION FOR DEPUTY HIRE AND OTHER EMPLOYEES—HOW APPROPRIATION MEASURE MAY BE AMENDED.

SYLLABUS:

1. County commissioners have full authority to fix the amount of the appropriation for deputy hire in the various county offices, and each county officer in fixing the compensation to be paid to his deputies, assistants, clerks, bookkeepers and other employes is limited to the amount of the appropriation.

2. An appropriation measure governing money for deputy hire in county offices when once passed by county commissioners, may be amended by either increasing or reducing the amount appropriated for such purpose, and the county officer appointing such deputies, assistants, clerks, bookkeepers and other employes, cannot expend in any fiscal year a greater sum for the salary of such deputies and other assistants than is fixed in the appropriation measure as amended.

COLUMBUS, OHIO, February 9, 1927.

HON. F. E. CHERRINGTON, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR:—You request my opinion upon a statement of facts which you set out in your letter of January 17, 1927, as follows.

“The commissioners at their first meeting made appropriations as required by law for 1927; in these appropriations were amounts for deputy hire for the county offices, some for \$900.00 per year, others for \$1200.00. Today the commissioners thought to fix the salaries of the deputies, in some instances, at a less figure, mostly at the amount appropriated. Objections were made to making changes, and it was to know whether the appropriations as made should stand, payable, of course, in equal monthly installments.”

This question is determined by the laws relating to the payment of salaries for deputy hire in the county offices and the making of appropriations therefor.

Section 5649-3g of the General Code provides, among other things, that:

“At the beginning of each fiscal year the county commissioners of every county, \* \* \* and the governing board or body of every other type of political subdivision or taxing district authorized by law to levy taxes or expend public funds, shall make appropriations classified for the several purposes for which expenditures are to be made for and during the said fiscal year from the funds of such county, \* \* \* , or other political subdivision or taxing district.”

It is provided by Section 2981 of the General Code that county officials may employ and appoint necessary deputies, assistants, clerks, bookkeepers and other employes, fix their compensation and discharge them. This section further provides that such compensation shall not exceed in the aggregate for each office the amount fixed by the commissioners for such office and that such compensation when fixed shall be paid monthly from the county treasury. It is provided by Section 2987 that these deputies and the other associates enumerated shall be paid from the appropriate county fund or funds upon the warrant of the county auditor.

Section 5649-3h of the General Code provides that any appropriation measure

may be amended or supplemented from time to time and the only limitation on the amending or supplementing of such appropriation measure is set out in this section in this language:

“Provided that no appropriation for any purpose shall be reduced below an amount sufficient to cover all unliquidated and outstanding contracts or obligations certified from or against the appropriation for such purpose.”

Since the salaries of deputies and the other assistants enumerated in Section 2981 cannot be classed as unliquidated and outstanding contracts or obligations and since the limitation contained in Section 5649-3h is the only limitation on the power of county commissioners to reduce the appropriation as first made, it follows that county commissioners may amend their appropriation measure and reduce the amount that was originally appropriated for salaries for deputies and assistants in the various county offices. And in view of the provisions of Section 2981 as well as Section 5660 which provides, *inter alia*, that:

“No expenditure, excepting from the proceeds of bonds, shall be made unless authorized by appropriation both as regards purpose and amount \* \* \*”

it is clear that the officer appointing such deputy and assistants cannot expend in any fiscal year a greater sum as salary for such deputy and assistants, than the amount fixed in the appropriation measure as amended.

Similar questions were considered by this department in Opinions Nos. 3429 and 3299 which were rendered in 1926.

It was sought in these opinions to distinguish between the departments of county government in which the term of office and the salaries of the employes of such office were fixed by other persons than the county officers referred to under Section 2978 of the General Code, and those departments in which the term of office and the salaries were fixed by the officers mentioned in Section 2981 of the General Code.

In the first class mentioned there was listed the assistants, clerks and stenographers of the prosecuting attorney's office, the court bailiffs of the common pleas court, the official court stenographers of the common pleas court and the probation officers of the juvenile court. In the other class were listed the deputies, assistants, clerks, bookkeepers, and other employes of the Probate Judge, Auditor, Treasurer, Clerk of Courts, Sheriff, Surveyor and Recorder.

I am unable to agree with this classification inasmuch as it is my opinion that the provisions of Sections 5649-3g, 5660 and 5660-1 are sufficiently broad to include not only those departments in which the terms of office and the salaries of the deputies and employes are fixed by the heads of the departments mentioned in Section 2978 of the General Code, but those departments in which the terms of office and the salaries of the deputies and employes are fixed by others than the heads of the departments mentioned in Section 2978 of the General Code as well.

Answering your question then, I am of the opinion that the county commissioners have full authority to fix the amount of the appropriation for deputy hire in the various county offices, and that each county officer in fixing the compensation to be paid to his deputies, assistants, clerks, bookkeepers and other employes, is limited to the amount of the appropriation, and that such appropriation measure, when once made by the county commissioners, may be amended by either increasing or reducing the amount appropriated, and that the county officers appointing such deputies and other assistants cannot expend in any fiscal year a greater sum for the salary of such deputy and assistants than is fixed in the appropriation measure as amended.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*