

2. Where a municipality which has been so combined with a township precinct holds a special election, for the purpose of submitting the question of a bond issue to the electors of such municipality, such election shall be held at the regular place of holding elections in such precinct as fixed by the board of elections, and in such case the expenses of such special election must be charged against such municipality.

3. At such special election the electors residing in such precinct outside of the limits of the municipality, would have no right to vote.

4. The fact that a municipality has been so combined with a township precinct for election purposes would not affect the distribution of the undivided liquor permit fund, as provided in section 6064-29, General Code.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

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3580.

REWARD—UNDER SECTION 2489, GENERAL CODE, COUNTY COMMISSIONERS UNAUTHORIZED TO PAY REWARD UNLESS PERSON DETECTED OR APPREHENDED HAS SUBSEQUENTLY BEEN CONVICTED.

*SYLLABUS:*

*A Board of County Commissioners having offered a reward under the provisions of Section 2489, General Code, for the detection or apprehension of any person charged with or convicted of a felony, is unauthorized to pay the amount of such reward from the county treasury unless the person detected or apprehended has subsequently been convicted.*

COLUMBUS, OHIO, December 6, 1934.

HON. RAYMOND E. LADD, *Prosecuting Attorney, Bowling Green, Ohio.*

DEAR SIR:—Your recent request for my opinion reads as follows:

“Mr. R. M. B., attorney and also chairman of the East Liverpool Pension Fund, has made a request of our local Board of County Commissioners that they pay to said Police Pension Fund the one thousand dollars which was offered as a reward by our Board of County Commissioners for the detention, apprehension, or information leading to the arrest and conviction of one Charles (‘Pretty Boy’) Floyd who killed a local patrolman, R. C., on April 16th, 1931. This reward was kept open and in effect at the time Floyd was killed by the East Liverpool police and Federal officers.

I wrote Mr. B. that in my opinion, under Section 2489 of the General Code, our Board of County Commissioners could only pay in the event a felon was apprehended and he was then convicted and that we could not offer a reward for a felon dead or alive, although I believe such a law would be more effective as both myself and our Sheriff received numerous letters from Oklahoma from 1931 up until Floyd was

killed, asking if the reward would be paid to the killer of Floyd, that they were sure they could kill him but did not care to take any part in the attempt to arrest him, and I answered all such inquiries stating in my opinion our Board of County Commissioners could only pay in the event of the arrest and conviction of said Floyd.

I would appreciate the favor, as would also the Police Pension Board of East Liverpool, Ohio, if you would render an opinion as to whether the commissioners can legally pay the thousand dollars reward to the Pension Board of East Liverpool, in the event they can establish the proof they were the cause of the death of Floyd.

I may add that I am aware of the law that Ohio officers cannot claim rewards offered by Ohio subdivisions for the apprehension and conviction of a felon, but believe that this is evaded by having the reward paid to the pension fund of the police department to which the officers belong."

The Legislature of Ohio has specifically given the Board of County Commissioners authority, when they deem it expedient, to offer a reward for the detection and apprehension of persons charged with or convicted of a felony. This statute enacted April 11, 1883, and being Section 916, Revised Statutes, was carried into the General Code as Section 2489. It now reads as enacted:

"When they deem it expedient, the county commissioners may offer such rewards as in their judgment the nature of the case requires, for the detection or apprehension of any person charged with or convicted of felony, and on the conviction of such person, pay it from the county treasury, together with all other necessary expenses, not otherwise provided for by law, incurred in making such detection or apprehension. When they deem it expedient, on the collection of a recognizance given and forfeited by such person, the commissioners may pay the reward so offered, or any part thereof, together with all other necessary expenses so incurred and not otherwise provided for by law."

In the enactment of Section 2489, General Code, supra, the Legislature, in effect, delegated its authority to a subordinate administrative body and in that sense the government, as distinguished from an individual citizen, under the statute offers the reward. That being the case it is pertinent to consider fundamental principles governing the exercise of powers by public officials, especially when such powers authorize the expenditure of public funds. As a general rule, public officers have only such powers as are expressly delegated them by statute, and such as are necessarily implied from those so delegated. *Guckenberger vs. Dexter* 60 O. S. 353. *Iretton vs. State* 81 O. S. 562. These powers must be exercised in the mode prescribed by statute. *State vs. Glidden*, 31 O. S. 309. *Tiffin vs. Shawhan*, 43 O. S. 178. It is also well settled that where the statute prescribes the mode by which power conferred upon a public officer or board shall be exercised, the mode specified is also the measure of power granted. *Frisbil Co. vs. East Cleveland*, 98 O. S. 266. In *State ex rel. Smith vs. Mahany*, 97 O. S. 272, it was held that public funds may be disbursed only by clear authority of law.

That the principles of law stated above apply to a Board of County

Commissioners is apparent. The Supreme Court of Ohio in *Treadwell vs. Commissioners*, 11 O. S. 183, at page 190 stated:

"The Board of Commissioners of a county is a quasi corporation, 'a local organization which, for purposes of civil administration, is invested with a few of the functions characteristic of a corporate existence.' *Commissioners of Hamilton County vs. Mighels*, 7 Ohio St. 109, 115. A grant of powers to such a corporation must be strictly construed. *Ib.* When acting under a special power, it must act strictly on the conditions under which it is given. The *Queen vs. Ellis*, 6 Q. B. 501, 516; *Stricker vs. Kelly*, 7 Hill, 9-23."

In offering a reward pursuant to Section 2489, General Code a board of county commissioners is acting under a special power and must therefore conform strictly to the conditions under which such power is given. The county commissioners are authorized under such section to offer rewards for the detection or apprehension of any person charged with or convicted of a felony, *and on the conviction of such person*, to pay the amount of such reward from the county treasury.

The Legislature had a purpose, no doubt, in inserting the phrase, "and on the conviction of such person," and I am of the opinion, in view of that phrase, that the board of county commissioners are unauthorized to pay a reward under the provisions of Section 2489, General Code unless there has first been a conviction of the person charged with the felony.

I am unable to find any decision by an Ohio Court holding either way on this point. However, the rule is well settled that when a reward is offered for the arrest and conviction of an offender the terms are construed copulatively and the claimant must show that he caused both the arrest and the subsequent conviction as both are conditions precedent to his recovery. (54 C. J. 795 and cases cited.)

I am not unmindful of the case of *Smith vs. State*, 38 Nev. 477, which in many respects is similar to the facts stated in your inquiry. The second branch of the syllabus in that case reads as follows:

"One who kills a murderer while making a lawful attempt to arrest him, which he resists, is entitled to a reward offered by the state for the arrest and conviction of such murderer."

The distinguishing feature between the *Smith* case *supra* and the facts here under consideration lies in the statutory authorization for the offer and payment of the reward. In the *Smith* case, *supra*, the Governor was authorized "to offer a reward for the arrest and conviction of the person or persons guilty of the murder of H. C." There was no express statutory restraint upon the payment of the reward; no express requirement that the reward could be paid only in the event there had been a conviction. Under Section 2489, General Code, after authorizing county commissioners to offer rewards for the detection or apprehension of any person charged with or convicted of a felony it is expressly stated that "and on the conviction of such person" the county commissioners may pay the amount of the reward from the county treasury. Clearly the conviction of the felon is made a condition precedent

to the payment of the reward by the county commissioners under the Ohio Statute.

Similar reasoning is found in *Caryl vs. State*, 135 Washington 1, where the Smith case *supra* was distinguished and the Court held as disclosed by the second branch of the syllabus:

“The conviction of one charged with the commission of a felony, having been made a condition of a reward offered by the governor for his apprehension, is not excused by the failure of the proper officers to make the charge against the accused upon which he could have been convicted; nor by the fact that after his apprehension he committed suicide before conviction.”

A case of like character and decision is *State vs. Wickliffe*, 106 Ky., 252, 50 S. W. 44. See also *Fortier vs. Wilson*, 11 U. C. C. P. 495; *Scott vs. American Express Company*, 233 S. W. 492; *State ex rel. Scott vs. Cox*, 243 S. W. 144.

In view of the limitations imposed upon county commissioners as public officials, in the exercise of such powers as are conferred upon them by statute; in view of the well established principle that public funds may be disbursed only by clear authority of law; and further because of the phrase contained in Section 2489, General Code, requiring the conviction of the person for whom the reward is offered as a condition precedent to the payment of any such reward, I am of the opinion, in specific answer to your inquiry, that a board of county commissioners having offered a reward under the provisions of Section 2489, General Code, for the detection or apprehension of any person charged with or convicted of a felony, is unauthorized to pay the amount of such reward from the county treasury unless the person detected or apprehended has subsequently been convicted.

It follows that the commissioners of Wood County, on the basis of the facts stated by you, were without authority to pay the reward offered by them in view of the fact that the death of the felon named in such reward prevented the conviction of such person as is required by Section 2489, General Code. Since the authority to pay such reward does not exist it is unnecessary to determine who, if anyone, would be entitled to the reward.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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3581.

APPROVAL—CANAL LAND LEASE FOR RIGHT TO OCCUPY AND USE FOR RESIDENTIAL AND AGRICULTURAL PURPOSES LAND IN VIOLET TOWNSHIP, FAIRFIELD COUNTY, OHIO—SARAH E. BENADUM HORN.

COLUMBUS, OHIO, December 6, 1934.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a canal