

forth in Section 4221 of the General Code, and no funds may be legally expended for such purpose where said statute has not been complied with."

That the question there presented was similar to the one here in question, is shown from the letter requesting an opinion, which reads in part as follows:

"A volunteer fire company or association was organized in the village of M. by a group of citizens, selected a person to act as chief and to represent the association in all financial and other matters. The fire company is not incorporated; was not organized by village officers and its members do not receive any compensation from the village; neither is the so-called chief appointed by the mayor.

The fire company through its chief and without advertising for bids entered into an agreement with The H. F. A. Company of Anderson, Ind., for the use of a fire engine and equipment at the rate of \$100 per month. The agreement further provides that if the village eventually buys the equipment the amounts paid to the H. F. A. Company by the fire company will be deducted from the purchase price to be paid by the village. Copy of this agreement is enclosed herewith.

The village through its mayor and clerk entered into a so-called provisional lease agreement with the Fire Company to furnish fire protection to the village for which services the village was to pay \$300.00 cash on delivery, presumably of the fire equipment to the Fire Company, and \$100 per month thereafter until the sum of \$5,700.00 with interest at the rate of 5½% per annum be fully paid. Thereafter the lessor, the fire company, will bargain and sell, transfer and assign to the village the fire apparatus. Copy of this agreement is enclosed."

Without further extending this opinion, it appears that the proposed agreement here presented is really in effect a contract of sale and is violative of the laws regulating competitive bidding.

It is therefore my opinion, in specific answer to your question, that the proposed agreement by the Ashland Community Fire Company and the various political subdivisions would be invalid.

Respectfully,
JOHN W. BRICKER,
Attorney General.

887.

DEPUTY COUNTY SURVEYOR—AUTHORITY TO APPOINT AS COUNTY MAINTENANCE ENGINEER AND FIX COMPENSATION VESTED IN SURVEYOR—LIMITED ONLY BY COUNTY COMMISSIONERS WHO CONTROL AGGREGATE COMPENSATION.

SYLLABUS:

1. *The authority to appoint a deputy county surveyor to be designated as county maintenance engineer and the authority to fix his compensation is vested in the county surveyor by virtue of sections 2981 and 2788-1 of the General Code.*

2. *Such authority is limited only by the appropriating authority conferred by the budget law (Secs. 5625-1 et seq.) upon the board of county commissioners to control the aggregate compensation for employes in the surveyor's office.*

COLUMBUS, OHIO, May 27, 1933.

HON. E. S. YOUNG, *Prosecuting Attorney, West Union, Ohio.*

Dear Sir:—I have your letter of recent date which reads as follows:

“We would like to have your opinion on the following:

Section 2788-1 G.C. provides that the County Surveyor shall designate one of his deputies as County Maintenance Engineer. Such Deputy so designated shall be a person experienced in the maintenance and repair of roads and it shall be the duty of such maintenance engineer, acting under the general supervision of the County Surveyor, to have charge of all road maintenance and repair work carried forward under the supervision of the County Surveyor.

In our county the County Surveyor has always looked after this work himself but now the present County Surveyor desires to have a maintenance engineer, which is being objected to by the County Commissioners.

The question is: Can the County Surveyor appoint a maintenance engineer and authorize the payment of his salary over the objections of the Board of County Commissioners?”

Section 2788-1, General Code, provides, *inter alia*:

“The county surveyor shall designate one of his deputies as county maintenance engineer. Such deputy so designated shall be a person experienced in the maintenance and repair of roads and it shall be the duty of such maintenance engineer, acting under the general direction and supervision of the county surveyor, to have charge of all road maintenance and repair work carried forward under the supervision of the county surveyor.”

After quoting this section, my immediate predecessor in an opinion, reported in Opinions of the Attorney General for 1929 volume 1, pages 86, 87, said:

“In analyzing the provisions of the section above quoted, it is apparent that the so-called county maintenance engineer is nothing other than a deputy county surveyor, whose duties are defined by statute when such designation is made by the surveyor.”

You do not state in your letter whether or not there is now a deputy county surveyor in your county. I assume that in Adams County there is not more than one such deputy. If there is one deputy, and if the commissioners have appropriated ample funds for personal services for the office to cover his salary, no problem arises if the surveyor designates him as county maintenance engineer.

I assume that your inquiry relates to the situation where the surveyor desires to appoint a new deputy and to designate him as the county maintenance engineer. In order to pay the salary of such additional deputy, it would no doubt be necessary to increase the personal service item in the appropriation for the surveyor's office for the current year. Your question resolves itself into whether or not the surveyor can, by mandamus or other remedy, compel the commissioners to amend the appropriation so as to make available funds for the payment of the salary of a new deputy surveyor who shall be designated as county maintenance engineer.

I desire to call your attention to two former opinions of this office. In the

first, reported in Opinions of the Attorney General, 1927, volume I, page 78, it was held, as appears from the 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."

The syllabus of the opinion reported in Opinions of the Attorney General, 1927, volume IV, page 2432, reads as follows:

"Although the board of county commissioners has nothing to do with the question as to the number of deputies, assistants or clerks that may be appointed by the sheriff and other officers of the county for their respective offices, nor with the amount of compensation to be paid any deputy, assistant or clerk in said several offices, the board of county commissioners is charged with the duty, to be exercised in its sound discretion, of making appropriations to pay the compensation of deputies, assistants and clerks in such offices, and the amount that may be expended by the sheriff or other county officers for deputies, assistants or clerk hire, may not in the aggregate exceed the appropriations made by the board of county commissioners for said purpose with respect to the said several county offices."

These opinions were based upon sections 2981 and 2987 of the General Code, and certain provisions of the budget law (sections 5625-1 et seq.) referred to in the opinion. I concur in these well-reasoned opinions and deem it unnecessary to repeat the discussions of the statutory provisions therein contained. It clearly appears that it is entirely within the discretion of the board of county commissioners to fix the aggregate appropriation for personal services for the surveyor's office and to amend it. Mandamus will not lie to control such discretion, in the absence of fraud or bad faith. *State ex rel. vs. Patterson*, 93 O. S. 25.

The opinion in the case of *State, ex rel. vs. Thomas, Aud.*, 35 O. A. 250, 257, contains this language:

"The Budget Act authorizes the commissioners to control the aggregate compensation for employees, in so far as provided, and within this aggregate the officers can fix the salaries of their respective appointees as they see fit."

In view of the foregoing, it is my opinion that:

1. The authority to appoint a deputy county surveyor to be designated as county maintenance engineer and the authority to fix his compensation is vested

in the county surveyor by virtue of sections 2981 and 2788-1 of the General Code.

2. Such authority is limited only by the appropriating authority conferred by the budget law (Secs. 5625-1 et seq.) upon the board of county commissioners to control the aggregate compensation for employes in the surveyor's office.

Respectfully,

JOHN W. BRICKER,
Attorney General.

888.

APPROVAL, BONDS OF CITY OF CLEVELAND, CUYAHOGA COUNTY,
OHIO—\$20,000.00.

COLUMBUS, OHIO, May 27, 1933.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.

889.

APPROVAL, NOTES OF STRYKER VILLAGE SCHOOL DISTRICT,
WILLIAMS COUNTY, OHIO—\$5,700.00.

COLUMBUS, OHIO, May 27, 1933.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.

890.

APPROVAL, NOTES OF WELLINGTON VILLAGE SCHOOL DISTRICT,
LORAIN COUNTY, OHIO—\$7,500.00.

COLUMBUS, OHIO, May 27, 1933.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.

891.

APPROVAL, NOTES OF MANCHESTER RURAL SCHOOL DISTRICT,
MORGAN COUNTY, OHIO—\$4,619.00.

COLUMBUS, OHIO, May 27, 1933.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.