

It may further be noted that under the provisions of Section 5625-9, General Code, each subdivision is required to establish a special fund for each special levy. In compliance with the provisions of this section and the instructions of the Bureau of Inspection and Supervision of Public Offices, it is believed that each county maintains a road and bridge fund and also a gasoline tax fund.

Section 5625-29, General Code, provides for the annual appropriation to be made by the taxing authority of each subdivision on or about the first day of each year, and authorizes supplemental appropriation measures which are found necessary, based on the revised tax budget.

From the foregoing, it would appear that in appropriating the money from the road fund, as authorized by section 7251-1, General Code, in order to comply with the provisions of other related sections of the so-called budget law, a specific appropriation should be made for the purposes contemplated.

In specific answer to your questions it is my opinion that:

1. The funds derived from the gasoline tax as distributed to the county under Section 5537, General Code, may not be expended for the compensation of a deputy detailed by the sheriff for the work of enforcing traffic regulations under Sections 7246 et seq. of the General Code.

2. The funds distributed to the county under the provisions of Section 5537, General Code, may be used to cover the cost of purchasing and erecting signs, as required by Section 7250, General Code.

3. In providing for a deputy for the purpose of patrolling the roads under Section 7251-1, General Code, a separate and specific appropriation should be made from the county road and bridge fund.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3306.

APPROVAL, BONDS OF WAYNE TOWNSHIP RURAL SCHOOL DISTRICT, PICKAWAY COUNTY, OHIO—\$35,000.00.

COLUMBUS, OHIO, June 6, 1931.

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

3307.

BOARD OF EDUCATION—CLERK-TREASURER UNAUTHORIZED TO WITHHOLD FROM TEACHERS' SALARIES, DUES IN MUTUAL BENEFIT ASSOCIATION AND PAY SAME TO SAID ASSOCIATION'S TREASURER.

SYLLABUS:

A board of education may not permit its clerk-treasurer to deduct from the salaries of teachers, with their consent, the amount of membership fees, dues, and

assessments charged against such teacher by a local teacher benefit association and pay the same to the treasurer of the benefit association.

COLUMBUS, OHIO, June 9, 1931.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your request for my opinion, which reads as follows:

“We are enclosing herewith a letter from Mr. E. of Mansfield, Ohio, in which he submits a question as to the establishment of a mutual benefit association among the teachers in the public schools in the city of Mansfield, particularly as to the authority of the Clerk of the Board of Education to withhold from teachers salaries the amount of dues in such mutual benefit association and pay the same to the association. You are respectfully requested to furnish this department your written opinion upon the question submitted in this letter.”

The pertinent portion of Mr. E.'s letter, which you enclose, reads as follows:

“There is a possibility that the teachers in the public schools of Mansfield and other municipalities may desire to organize a Mutual Benefit Association ‘not for profit’ to give to its members certain relief and benefits in case of sickness or accident.

It would be the desire of the teacher members of an Association to request and authorize in writing the clerk or treasurer of the school board to deduct monthly from their salary the membership fee, dues, and assessments charged by the Association. The clerk in turn would remit the total of dues deducted to the Treasurer of the Association. The Association would be for those only employed by the local school system, and its success is dependent somewhat on the dues being collected as above set out.

I had the pleasure of visiting you on the 19th, and you stated you would submit to the Attorney General's Office the question as to whether the Clerk or Treasurer of a School Board could legally make the deduction of dues for an association and its members.”

For the purposes of this opinion, I assume that any proposed Benefit Association such as you mention, will have complied with the law with respect to the organization of such associations, and having done so, desires to arrange for the collection of membership fees, dues and assessments provided for by its by-laws by having those amounts deducted from the teachers' salaries and paid by the treasurer of the school district direct to the treasurer of the association.

The question submitted is whether or not an arrangement of this kind would be legal and whether or not the treasurer of the school funds in city school districts may lawfully make these deductions and payments.

Provision is made by law, imposing on boards of education a mandatory duty to select a depository for the school funds of their respective districts, and penalizing the members of the board for failure to do so. (Sections 7604 to 7609, inclusive, of the General Code.) As a consequence thereof, practically all, if not all the city school districts in the state have selected depositories as provided by law and have accordingly dispensed with a treasurer as such, thereby reposing in the clerk of the board the duties of treasurer (Sections 4782 and 4783, General

Code), although Section 4763, General Code, provides specifically that in each city school district, the treasurer of the city funds shall be the treasurer of the school funds. See Opinions of the Attorney General for 1922, page 74.

When the treasurer of a school district is dispensed with, in consequence of the providing of a school depository by the board, and the duties of the treasurer fall upon the clerk by reason thereof, the clerk is required to give an additional bond to that required of him as clerk "equal in amount and in the same manner provided by law for the treasurer of the school district." (Section 4783, General Code.)

The duties of a school treasurer with respect to disbursements of moneys of the district are set forth in Section 4768, General Code, which reads in part as follows:

"No treasurer of a school district shall pay out any school money except on an order signed by the president or vice-president and countersigned by the clerk of the board of education, and when such school moneys have been deposited as provided by sections 7604-7608 inclusive, no money shall be withdrawn from any such depository, except upon an order signed by the treasurer and by the president or vice-president and countersigned by the clerk of the board of education; * **"

The proposed plan of having the clerk-treasurer of a city school district retain from a teacher's salary a sufficient amount to pay the fees and assessments charged by a benefit association against the teacher and having payment made of the amount so retained to the treasurer of the benefit association, would require the teacher to voluntarily authorize its being done and would also require in my opinion the consent of the board of education.

Obviously, no authority to do this exists unless the teacher does authorize it, and even then I doubt very much whether the clerk-treasurer would be justified in spending his time and using the facilities of his office for this purpose without the sanction of the board. In larger cities, especially, it would involve considerable additional bookkeeping and take considerable additional time of a clerk to keep the accounts of the board if he is required to keep separate accounts of these fees, membership dues and assessments.

Clearly, the clerk-treasurer could not, on his own authority, proceed in the manner desired, and I seriously doubt whether the additional sanction of action by the board could give legality to the arrangement. While the benefit association is composed of teachers only, and its purposes are wholly laudable, yet it is a private enterprise. It follows that the utilization of the time of a public employe, and consequently the expenditure of public funds, would be for private purposes. Under such circumstances, the fundamental principle that public officers have only such powers as are by law expressly granted to them, or such incidental powers as are necessary to effectuate the powers expressly granted would seem to apply with peculiar force.

I am accordingly of the opinion that a board of education may not permit its clerk-treasurer to deduct from the salaries of teachers, with their consent, the amount of membership fees, dues and assessments charged against such teacher by a local teacher benefit association and pay the same to the treasurer of the benefit association.

Respectfully,

GILBERT BETTMAN,
Attorney General.