

will be observed that the plural is used in mentioning the judges, whereas, of course, the clerk and prosecuting attorney is in the singular, which clearly indicates that the legislature had in mind that more than one judge would be included in said allowance. The section otherwise provides that not less than fifteen per cent (15%) of the fines and penalties collected shall be paid to the Law Library Association without deducting the amount of the allowance of the county commissioners to said judges. It follows therefore that there always will be some amount that will be turned over to the Library Association in the event that any fines are collected.

Considering Section 3056, General Code, as a whole, it is my opinion that it was the intention of the legislature in the enactment thereof that all of the allowances made by the county commissioners as salary to the judges, clerk and prosecuting attorney should be deducted before determining the amount due the Library Association, except the minimum of fifteen per cent (15%) hereinbefore mentioned.

I realize that there may be situations such as you describe which result in some hardships to certain library associations by reason of the peculiar facts, but it is believed that the remedy for such evils, if it is evil, is properly in the hands of the legislature.

In view of the foregoing and in specific answer to your inquiry, it is my opinion that in view of the provisions of Sections 1579-501 and 3056 of the General Code it is necessary to deduct the total amount of the allowance to all of the judges, clerk and prosecuting attorney in determining the amount to be distributed to the Law Library Association, excepting the minimum of fifteen per cent (15%) which is to be distributed to the Library Association without making such deduction. The character of the cases being tried by such judges has no bearing upon the question. In view of the conclusion I have hereinbefore reached it is believed unnecessary to make more specific answer to the inquiries propounded.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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2110.

APPROVAL, BONDS OF VILLAGE OF POWHATAN POINT, BELMONT COUNTY, OHIO—\$15,097.70.

COLUMBUS, OHIO, July 19, 1930.

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

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2111.

LEGAL COUNSEL—BOARD OF EDUCATION AND COUNTY COMMISSIONERS MAY NOT HIRE OUTSIDE COUNSEL FOR AID IN PREPARATION OF BOND TRANSCRIPT—EXCEPTION NOTED.

*SYLLABUS:*

1. *Under the provisions of Section 4761, General Code, the prosecuting attorney is the legal adviser of all boards of education of his county except city boards of education, and as such it is his duty to render such legal advice as may be requested*

of him in connection with the proceedings necessary for the issuance of bonds. The board may, however, if it sees fit, employ an assistant to the clerk for the purpose of aiding the clerk in the preparation of such transcript, but such assistant may not be employed as a legal adviser.

2. A board of education may not pay an attorney or firm of attorneys for approving the transcript of a bond issue of such board.

3. Except in case legal counsel other than the prosecuting attorney is employed to represent a board of county commissioners with the approval of the common pleas court as provided in Section 2412, General Code, a board of county commissioners may not pay for a legal opinion approving a transcript of the proceedings relative to an issue of county bonds.

COLUMBUS, OHIO, July 19, 1930.

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

GENTLEMEN: Your letter of recent date is as follows:

"You are respectfully requested to render this department your written opinion upon the following:

Section 4761, General Code, requires the prosecuting attorney to be the legal adviser of all the boards of education of the county except city boards of education.

Question 1. Under the provisions of this section, is it the prosecuting attorney's duty to prepare the legislation for the issuing of school bonds, and if so, may the board of education employ other attorneys to prepare such legislation unless the prosecuting attorney refuses to act for such board?

Question 2. May a board of education legally pay the firm of \_\_\_\_\_ for approving the legislation or transcript for a bond issue by such board?

Section 2917, General Code, requires the prosecuting attorney to be the legal adviser of county officers.

Question 3. May a board of county commissioners legally pay the firm of \_\_\_\_\_ of \_\_\_\_\_ for approving the transcript of a bond issue made by such county commissioners in any way other than in the manner provided in Section 2412, General Code, by the approval of the common pleas court?

Question 4. May a board of county commissioners in its advertisement for bids for a bond issue, insert the following: 'Bonds to be approved by \_\_\_\_\_ of \_\_\_\_\_, Ohio, at no cost to the buyer.?'"

Section 4761, General Code, provides as follows:

"Except in city school districts, the prosecuting attorney of the county shall be the legal adviser of all boards of education of the county in which he is serving. He shall prosecute all actions against a member or officer of a board of education for malfeasance or misfeasance in office, and he shall be the legal counsel of such boards or the officers thereof in all civil actions brought by or against them and shall conduct such actions in his official capacity. When such civil action is between two or more boards of education in the same county, the prosecuting attorney shall not be required to act for either of them. In city school districts, the city solicitor shall be the legal adviser and attorney for the board of education thereof, and shall perform the same services for such board as herein required of the prosecuting attorney for other boards of education of the county."

This section was under consideration by this office in an opinion appearing in Opinions of the Attorney General for 1915, Vol. II, p. 1911, the syllabus of which is as follows:

"It is the duty of prosecuting attorneys to prepare bond issues and transcripts for boards of education of which they are legal advisers."

In the course of the opinion, the then Attorney General said:

"You state in your letter that it has been necessary for you to prepare the resolutions, proceedings and transcripts thereof, for the reason that the members offering the resolutions were unable to properly prepare the same and that the clerk was not able to spread the minutes of the meeting upon his record correctly nor to make a transcript of the proceedings for the bonding company. While that may be true, nevertheless, if it was not the duty of the prosecuting attorney as legal adviser of the board to prepare the proper resolutions, minutes, etc., it was the duty of the members of the board of education and the clerk so to do, and your bill should, therefore, not be against the board of education for performing the duties which should have been performed by the members and clerk, but against the members themselves, if they were unable so to do. As legal adviser of the board of education, however, it would seem to me that it was your duty under Section 4761, G. C., to advise the board and prepare the necessary papers for them to accomplish.

I cannot, therefore, agree with you in your conclusion that it would be legal for the board of education to pay the bill presented by the prosecutor for preparing bond issue and transcript for the board of education of Waldo township."

Since the rendition of this opinion, the Uniform Bond Act has apparently placed upon the clerk of a board of education the duty of preparing bond transcripts. Section 2293-30 of this act provides as follows:

"It shall be the duty of the clerk, or other officer having charge of the minutes of the taxing authority to furnish to the successful bidder for its bonds, a true transcript certified by him of all ordinances, resolutions, notices, and other proceedings had with reference to the issuance of said bonds, including a statement of the character of the meetings at which said proceedings were had, the number of members present, and such other information from the records as may be necessary to determine the regularity and validity of the issuance of said bonds; and it shall be the duty of the auditor or other officer, having charge of the accounts of said subdivision, to attach thereto a true and correct statement certified by him of the indebtedness, and, of the amount of the tax duplicate thereof, and such other information as will show whether or not said bond issue is within any debt limitation imposed by law."

In your first question you refer to the refusal of a prosecuting attorney to act for a board of education, other than a city board, in connection with the preparation of legislation for the issuing of school bonds. The circumstances under which the prosecuting attorney may refuse to act as counsel for a board of education are discussed in an opinion appearing in Opinions of the Attorney General for 1929, Vol I, p. 216. After referring to Sections 2916, 2917 and 2918, relating to the duties of the prosecuting attorney, it is said in this opinion at p. 218:

"The several sections of the Code above noted have been under consideration by former attorneys general in a number of opinions. It will be noted that the language with reference to a city solicitor in cities and a prosecuting attorney in counties is very similar. It will also be noted that the language of Section 4761, General Code, with reference to the prosecuting attorney, wherein it says 'he shall be the legal counsel of such boards or the officers thereof in all civil actions brought by or against them and shall conduct such actions in his official capacity' is plain, and to the point, and an examination of the several previous opinions of this department will disclose that under no circumstances is a village or rural board of education authorized to employ any counsel other than the prosecuting attorney, or a city board of education to employ other counsel than the city solicitor, to conduct actions in court unless there is a conflict of interest, and thus a conflict of duty on the part of the prosecutor or the city solicitor, as the case may be, and the prosecutor or solicitor refuses to act as counsel for the board of education but chooses to act for the other party."

Probably there would be no conflict of interest involved when a rural or village board of education decides to take the necessary steps for issuing bonds. Unless such conflict should arise, the provisions of Section 4761 are clearly applicable.

The 1929 opinion hereinabove referred to considered the question of whether or not it is the duty of the prosecuting attorney in his official capacity to prepare an abstract of title to real estate for a board of education. Reference is made therein to an opinion of this office rendered in 1923 holding that a prosecuting attorney is not required so to do in his official capacity. The language appearing on p. 219 is as follows:

"The opinion of the Attorney General for 1923 referred to above, with which I concur, is based on the fact that the preparation of an abstract of title to real estate is neither the giving of legal advice nor the conducting of a case in court. The preparation of abstracts of title is a business by itself, aside from strictly legal business. It furnishes the facts and the basis for the preparation of a legal opinion with reference to the title which it purports to abstract and contains the facts from which a legal opinion may be formulated, but does not in and of itself, consist of the doing of the things which Section 4761, General Code, requires prosecuting attorneys or city solicitors as public officials, to do. It is not, in my opinion, in any way analogous to the conducting of a civil action brought by or against a board of education, which by the terms of Section 4761, a prosecuting attorney and a city solicitor are specifically enjoined to do."

I do not believe that the preparation of a bond transcript should be considered as in the same category with an abstract of title to real estate, although it unquestionably partakes somewhat of similar characteristics. It is work that is not, strictly speaking, the giving of legal advice, nor is it, of course, conducting a case in court. In order that the various statutory steps be properly taken so that bonds to be issued may be valid and marketable, it is frequently necessary that a considerable amount of legal advice be given. Such advice it is clearly the duty of the prosecuting attorney to give to the board of education or to the clerk of the board. I concur in the opinion of this office rendered in 1915 hereinabove cited, insofar as it relates to the employment of an attorney as such other than the prosecuting attorney to prepare a transcript of the proceedings for the issuance of bonds, but I have considerable doubt as to whether or not a board of education may not employ an assistant to the

clerk to aid him in performing the duties imposed upon him under Section 2293-30, supra, in connection with the issuance of bonds. Boards of education are generally authorized to employ such employes as they may see fit. Section 4752, General Code, relates to proceedings necessary for the employment of "teachers and other employes". In the event a board of education should see fit to employ an assistant for the purpose of assisting the clerk in the preparation of the bond transcript, I know of no reason why it may not do so. Such assistant would, of course, be employed as an assistant to the clerk and not as a legal adviser of the board, since, under Section 4761, supra, it is provided that the prosecuting attorney shall act in this capacity.

Specifically answering your first question, it is my opinion that under the provisions of Section 4761, General Code, the prosecuting attorney is the legal adviser of all boards of education of his county except city boards of education, and as such it is his duty to render such legal advice as may be requested of him in connection with the proceedings necessary for the issuance of bonds. The board may, however, if it sees fit, employ an assistant to the clerk for the purpose of aiding the clerk in the preparation of such transcript, but such assistant may not be employed as a legal adviser.

In your second question, you ask as to the payment of a fee for a legal opinion upon the legality of the proceedings of a board of education in connection with the issuance of bonds. Since the prosecuting attorney is the legal adviser of all boards of education within his county other than city boards, and since, as hereinabove indicated, such board of education has no authority to employ legal counsel other than the prosecuting attorney except in the case of a city board, unless there should be a conflict of interest involved, it follows that your second question must be answered in the negative.

Your third question refers to Section 2917, General Code, which provides in part as follows:

"The prosecuting attorney shall be the legal adviser of the county commissioners and all other county officers and county boards and any of them may require of him written opinions or instructions in matters connected with their official duties. He shall prosecute and defend all suits and actions which any such officer or board may direct or to which it is a party, and no county officer may employ other counsel or attorney at the expense of the county except as provided in section twenty-four hundred and twelve. \* \* \*."

Section 2412, referred to in the foregoing section and to which reference is also made in your communication, provides as follows:

"If it deems it for the best interests of the county, the Common Pleas Court, upon the application of the prosecuting attorney and the board of county commissioners, may authorize the board of county commissioners to employ legal counsel temporarily to assist the prosecuting attorney, the board of county commissioners or any other county board or officer, in any matter of public business coming before such board or officer, and in the prosecution or defense of any action or proceeding in which such county board or officer is a party or has an interest, in its official capacity."

The discussion hereinabove contained with respect to boards of education is directly applicable to your third question, since the provisions with reference to the duties of the county prosecutor as legal adviser to the county commissioners are parallel with the provisions with respect to the duties of the county prosecutor as to boards of education other than city boards. It is, therefore, my opinion that

except in case legal counsel other than the prosecuting attorney is employed to represent a board of county commissioners with the approval of the Common Pleas Court as provided in Section 2412, General Code, a board of county commissioners may not pay for a legal opinion approving a transcript of the proceedings relative to an issue of county bonds.

In view of the fact that a board of county commissioners does not have the general authority to employ counsel other than the prosecuting attorney for the purpose of securing a legal opinion as to an issue of bonds of the county, such board may not in its advertisement for bids for a bond issue insert a statement to the effect that bonds are to be approved by a firm of attorneys or an attorney other than the prosecuting attorney at no cost to the buyer, unless, of course, such firm will render its legal opinion free of charge. It is believed a more specific answer to your fourth question is unnecessary.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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2112.

APPROVAL, LEASE IN TRIPPLICATE, EXECUTED BY CONSERVATION COMMISSIONER BY WHICH THERE IS LEASED TO EDWARD DICKMEIER, OF CINCINNATI, OHIO, A PARCEL OF STATE RESERVOIR LAND AT LAKE LARAMIE, SHELBY COUNTY, OHIO.

COLUMBUS, OHIO, July 19, 1930.

HON. PERRY L. GREEN, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval by the Division of Conservation in the Department of Agriculture a certain lease in triplicate, executed by the Conservation Commissioner, pursuant to the authority and direction of a resolution duly adopted by the Conservation Council, by which there is leased and demised to one Edward Dickmeier, of Cincinnati, Ohio, a certain parcel of state reservoir land at Lake Loramie, Shelby County, Ohio, which parcel of land is more particularly described as follows:

“Commencing at a point within the Northwest Quarter of Section 6, Town 6, South, Range 5 East, Shelby County, Ohio, being 660 feet south and 293 feet east of the northwest corner of said Section; thence North 17° 30' East, 134.3 feet to the place of beginning; thence North 59° 30' East, 124.1 feet to a stake; thence South 72° 15' East, 72.2 feet to a stake; thence South 17° 33' West, 129 feet to a stake; thence North 71° 50' West, on a line passing through the well, 136.2 feet to a stake; thence in a northwesterly direction 40 feet, more or less, to the place of beginning, and containing 15,843 square feet, more or less.”

By said lease the lessee therein named is given the further right to use in common with one Albin Martin certain other reservoir lands at Loramie Lake therein described.

Upon consideration of the provisions of said lease, which is for a term of fifteen years, and which calls for an annual rental of six per cent upon the sum of \$300.00,