

eral contract, including plumbing and electrical work for rebuilding porches on cottages "G" and "6," Ohio Hospital for Epileptics, Gallipolis, Ohio, and calls for an expenditure of \$9,000.00.

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has further been submitted a contract bond upon which Ralph W. Moore and J. Leo Child appear as sureties, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*

3245.

SUPPLEMENT TO OPINION NO. 3175.

COLUMBUS, OHIO, April 3, 1926.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—In connection with the title discussed in the above opinion, you have submitted certain additional data which indicates that the taxes and assessments against the property mentioned are now paid in full.

The revised deed as now submitted contains the proper description, is in proper form and regularly executed, and when delivered, will be sufficient to convey the title to the State of Ohio.

I have also re-examined the abstract as now submitted, and am of the opinion that same shows a good and sufficient title to the premises under consideration in William T. Sawyer and William B. Haynes, the grantors.

The additional data to the abstract, the correct deed and other data submitted by you are herewith returned.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*

3246.

COUNTY COMMISSIONERS ARE NOT AUTHORIZED TO PAY EXPERT WITNESS HIRED AND USED BY THE DEFENSE IN A CRIMINAL CASE. SECTION 2494 G. C. CONSTRUED.

*SYLLABUS:*

*Section 2494, General Code, was not intended to provide for payment of expert witnesses hired and used by the defense.*

COLUMBUS, OHIO, April 5, 1926.

HON. G. WALTER BOOTH, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—On February 8th, I received the following letter from you:

“Will you kindly favor this office with an opinion of your department upon the following question:

“Under General Code 2494, may the county commissioners, all conditions precedent being fulfilled, legally pay a claim for the services and testimony of an expert witness hired and used by the defense in a criminal case?”

Section 2494, General Code, reads as follows:

“Upon the certificate of the prosecuting attorney or his assistant that the services of an expert or the testimony of expert witnesses in the examination or trial of a person accused of the commission of crime, or before the grand jury, were or will be necessary to the proper administration of justice, the county commissioners may allow and pay such expert such compensation as they deem just and proper and the court approves.”

This section was undoubtedly passed by the legislature for the benefit of the prosecutor and not of the defendant. Previous to its passage, the prosecutor had no way to protect the state's interests from the attacks of the defense by means of experts, and it was to remedy this condition that this law was enacted.

Certainly, if the prosecutor deems an expert necessary, he can subpoena one and by following this section pay such expert the value of his services.

If the legislature had meant otherwise, they would not have left the rights of the defendant to the whim of the prosecutor, but would more likely have left the question entirely up to the court and would have made provision for hiring such experts only for indigent prisoners, the same as they provided counsel under section 13617, General Code..

The prosecutor's duty is to enforce the law, not to defend the accused.

In the case of *State, ex rel., Commissioners of Franklin County, vs. Guilbert, Auditor*, 77 Ohio St. 333, such expense was held not to be charged as costs.

You will note, further, that in this section appear the words “or before the grand jury,” which also indicate the purpose of the section.

In Opinions of the Attorney General for 1914, page 43, I find this syllabus:

“An expert witness may not be paid fees from the county treasury unless section 2494 of the General Code is complied with.”

This was a case where the defendant called an expert and the bill was approved by the court but not by the prosecutor. While the opinion does not say what the Attorney General would have held if the prosecutor had certified the bill, it is evident he considered the section was to aid the prosecutor and not the defense.

This section calls for the expenditure of county funds and must be strictly construed.

It is my opinion that section 2494, General Code, was not intended to provide for payment of expert witnesses hired and used by the defense.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*