If any possible doubt lingers in the mind as to whether or not the General Assembly meant compensation when it used the word in original Section 6828-47, General Code, surely the subsequent legislation through Amended Senate Bill 69 requiring the treasurer of state to pay the money he had hitherto received as compensation into the state treasury to the credit of the general revenue fund, would remove such doubt.

Had the General Assembly abolished the duties of the treasurer of state with references to funds of conservancy districts, then there might be some tenable argument to the effect that the treasurer of state could not continue to draw such compensation, as his office in so far as such funds were concerned, was in effect abolished, but this the General Assembly did not do. On the contrary, it increased his duties and at the same time undertook to cut off the compensation allowed for their performance, which it can not do during your term of office.

In my opinion, you are entitled to draw this compensation during your present term.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

930.

MEMBERSHIP IN ASSOCIATION OF RELIEF AGENCIES, A PRIVATE ORGANIZATION, MAY NOT BE PAID FROM PUBLIC FUNDS—FINDING MAY BE MADE AGAINST COUNTY AUDITOR AND COUNTY COMMISSIONER FOR SUCH PAYMENT.

SYLLABUS:

1. *Neither funds arising from the provision of poor relief legislation nor any public funds may be expended in payment of dues for membership in a private organization which is an association of various relief agencies though that association may render useful information, investigation services and periodicals to its members, because the power to so expend public funds is not expressly given by statute and can not be implied from any provisions of law applicable.*

2. *Where the county commissioners and the county auditor have in violation or neglect of their official duties permitted an unauthorized expenditure of public funds, a finding may be made against the county commissioners and county auditor.*

COLUMBUS, OHIO, July 28, 1937.

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

GENTLEMEN: This will acknowledge the receipt of your recent communication which reads as follows:

"We are enclosing herewith a letter received from one of our examiners, Mr. James N. Main.

You are respectfully requested to furnish this department with your written opinion upon the questions submitted therein.

The vouchers mentioned in Mr. Main's letter have been returned to him, but we submit transcript of the bills in said vouchers, as follows:

Bill dated July 10, 1934, Family Welfare Association of America, 130 East 22nd Street, New York,
To Cuyahoga County Relief Administration,
1900 Euclid Avenue, Cleveland, Ohio.
Membership dues, 1934.....$200.00.

This bill was paid by warrant vouchered and filed August 30, 1934, payable from Emergency Family Relief Fund; approved by Jos. T. Gorman and J. S. Curry, County Commissioners.

The second bill: Family Welfare Association of America, 130 East 22nd Street, New York.

DUES PLEDGE BLANK

Member Agency Cuyahoga Co. Relief Administration City of Cleveland, Ohio. For the Association Fiscal Year beginning January 1, 1935 Dues are $200.00 (2% of local service expenditure).

This bill was contained in voucher No. 59686, filed February 2, 1935, payable from Welfare & Relief, General Fund, for Member Agency, Cuyahoga County Relief Administration; approved by Jos. T. Gorman and J. S. Curry, County Commissioners."

From the letter enclosed in your communication, the questions given below were taken:

> "We are enclosing two vouchers that have been paid from the Treasury of Cuyahoga County upon allowance of the Board of County Commissioners. We question the legality of paying claims of this nature, particularly from poor relief moneys that are presumed to be used for the relief of those in need . . .
>
> . . . If it should be held that the payments were illegal, might there not also be some financial responsibility imposed upon the officials who authorized the disbursement?"

The Family Welfare Association of America, the organization in question, is an association made up of several public agencies located in various parts of the country, specializing in information service, conferences on case work procedure, social interpretation, and social service study groups. For the benefit of its members, it also sponsors publications, consisting of two periodicals, various books and pamphlets on family social work. In a letter to the Bureau of Inspection and Supervision of Public Offices, asserting its rights to the dues or fee in question, the Family Welfare Association of America stated:

> "Although these payments are termed 'membership dues' they are in effect payments for services rendered. These services include direct consultation with members of our staff in regard to personnel, case work procedure, interpretation, training, etc.; information service which enables the agency to obtain data on public and private relief in the country as a whole; publications relating to problems of relief; attendance at institutes and round tables for the discussion of relief administration problems."

For the sake of understanding may it be said here that the value and benefit of these services are not at issue in this opinion. The matter before us is whether or not public funds, particularly the poor relief funds, may be lawfully expended to pay dues in such an organization.

In any question involving the authority of county commissioners an old and well established rule must be considered. County commissioners have only those powers expressly given by statute or those powers which can be necessarily implied from the express statutory authority conferred. (*Elder* vs. *Smith,* 103 O. S., 369). This is the normal rule as to authority of county commissioners and when, as in the case before us, expenditure of public funds is at issue, this rule is more strictly applied than ever in order to safeguard and protect the taxpayers from whom such public funds are obtained. This being the case, authority to pay the bills in question must have been derived from the

poor relief statutes of the General Code (Sections 3476-3496 inclusive) and the emergency legislation in force and applicable at the time.

Amended Senate Bill No. 4 (1932) 114 O. L. (Special Session) 17.
Senate Bill No. 63 (1933) 115 O. L., 29.
House Bill No. 39 (1934) 115 O. L., (Part 2) 118.
House Bill No. 7 (1934) 115 O. L., (Part 2) 176.

The general poor relief laws as set forth in Sections 3476 to 3496 inclusive, in the General Code (not quoted herein because of length) in providing for the administration of poor relief do not authorize directly or indirectly the contribution or expenditure of public funds to private agencies in payment of dues for membership in a welfare or relief association.

Coming now to the emergency legislation applicable and in force at the time, an examination of sections in these laws defining poor relief and authorizing expenditure of funds reveals no authority express or implied for their payment in furtherance of the purpose in question.

Section I of Amended Senate Bill No. 4, supra, deals with definitions. This section was amended by Senate Bill No. 61 (1933), Senate Bill No. 63 (1933) and House Bill No. 39 (1934), so that at the time in question it provided as follows:

"Sec. 1. The following definitions shall be applied to terms used in this act:

(a) The term 'taxing authorities' shall mean 'county commissioners.'

(b) The term 'work relief' shall mean 'relief given in exchange for labor, including the cost of materials and articles of equipment heretofore or hereinafter purchased, and/or cost of administration required for the execution of any project approved by the state relief commission of Ohio as a means of furnishing employment for indigent persons, or required for the execution of any project approved by the federal civil works administration as a civil works project, or any project hereinafter approved by the federal civil works administration or federal emergency relief administration.'

(c) The term 'direct relief' shall mean the furnishing of food, clothing, shelter, fuel and medical attention in the home."

Section II of the above mentioned amended Senate Bill No. 4 in shedding further light on the administration of funds created by the Act, provided in part as follows:

> *"Funds raised under this act by the issue of bonds shall be used for poor relief.* Any subdivision administering funds raised under this act shall require labor in exchange for relief given to any family where there is a wage earner or wage earners, except in cases which may be exempted in accordance with rulings that may be made by the state relief commission. 'Poor relief,' in the case of a county, shall mean the payment of mothers' pensions allowed, or to be allowed, by the juvenile court, under sections 1683-2 to 1683-9 inclusive, of the General Code; soldiers' relief as provided in Sections 3476 and 3484-2 of the General Code; and the maintenance of a county home and the children's home, and the expense of placing children in private homes incurred, pursuant to Sections 3095 and 3096 of the General Code; and the furnishing of direct and work relief by county commissioners under the provisions of Section 8 of this act. * * * . * * * in the case of any political subdivision, said term shall include work relief, direct relief and the maintenance of a hospital belonging to the political subdivision or the making of payments by the political subdivision to hospitals otherwise owned, for the care of the indigent, sick or disabled of the political subdivision, as authorized by law. Under the provisions of this act, it shall be permissible for a county, city or township, to give relief to needy unemployed who cannot be termed 'indigent' under Section 3476." (Italics, the writer's).

In addition to the provisions hereinabove quoted, Section 9 of the original Amended Senate Bill No. 4 as amended by Senate Bill No. 63 (1933) gives further instructions as to the use and purpose of the emergency relief fund which was created by the special legislation hereinabove referred to. Section 9 provided in part as follows:

> "No disbursement of any part of the emergency relief fund shall be made by the county commissioners or the council or other legislative body of any city of any county until the budget of such county or city for relief expenditures has been approved by the state relief commission. At any time after such approval and in accordance therewith and prior to the first day of March, * * * 1935, the county commissioners of any county shall, from time to time, distribute such portion of said fund to any or all of the cities (whether charter cities or otherwise) and townships of such county, according to their relative needs for poor relief as determined by such county and as set out in such approved budget; such moneys so distributed to any city or

townships shall be expended for poor relief in such city or township, including the renting of land and the purchase of seeds for gardening for the unemployed, and for no other purpose. * * *"

A study of the provisions of law hereinabove given reveal no express authority for the use or expenditure of poor relief funds for membership dues in an association of relief agencies.

It may be contended, however, that in the authority given to expend poor relief funds by Section 9 of Senate Bill No. 63, supra, the right to provide for investigations would be implied, and that the board of county commissioners could therefore under the authority given arrange for the investigation service given by the Family Welfare Association of America. The answer to this contention may be found in Opinions of the Attorney General for 1933, Volume I, No. 862, page 768 and No. 900, page 830. In Opinion No. 862, at page 768, it was held that the board of county commissioners could not use public funds to compensate or to pay expenses of a county relief board which made investigations for relief service. Opinion No. 900, appearing at page 830, held that the county commissioners could not use public funds to pay salaries and expenses of a local office of the Red Cross which performed valuable relief services. In the last opinion, the following paragraph appears:

" * * * If upon the approval of the state relief commission the county commissioners decide to furnish the direct relief and it is necessary before granting such relief to make investigations, the county commissioners would have the implied authority to employ the necessary persons to make the investigations. *The commissioners would have no authority to pay a private society for making such investigations.*" (Italics the writer's.)

The interpretation of law adopted in this opinion is by no means unique. Analogous statutes involving the right of boards of education and cities or municipal corporations to use public funds in payment of dues for various associations of the same type as the one now in question have arisen from time to time, and the same interpretation as to their authority has been given consistently by the courts and this office.

In an opinion of the Attorney General for 1935, Volume I, page 677, it was held that a board of education had no authority to expend public school funds in payment of annual dues to the Ohio State Association of Boards of Education or any similar organization.

In *State ex rel. Thomas* vs. *Semple* (112 O. S., 559), a case which finally went before the Supreme Court, the city of Cleveland attempted to expend public funds for membership in a "Conference of Ohio Municipalities." This was an organization of municipalities which was "to serve as an agency of common action in all matters of common concern to municipalities of Ohio, with dues ranging from $10.00 to $500.00 a year." This association, as the one with which we are now concerned, sponsored a bureau of information, certain services and a periodical for members. The court held that public funds could not be so expended without definite authority from express or general provisions of law.

In an opinion of the Attorney General for 1930, Volume I, page 1453 the same issue arose where a city council sought to appropriate funds for payment of subscription fees and dues to a Bureau of Public Personnel Administration in Washington, a Civic Assembly of the United States and a National Municipal League. The opinion held that such an expenditure of public funds was not authorized and applied the rule of the Semple case. Again in 1935 an opinion of the Attorney General, Volume II, page 858, was written upon this same question. The syllabus of that opinion reads:

> "A municipal corporation is without authority to expend public funds for membership dues or fees in an association of municipalities or to appropriate funds to pay for services rendered, or information furnished on municipal affairs by such association."

In view of the facts given and the law applicable, it is my opinion that neither funds arising from the provisions of poor relief legislation nor any public funds may be expended in payment of dues for membership in an organization which is an association of various relief agencies, though that association may render useful information and investigation services and periodicals to its members, because the power to so expend public funds is not expressly given by statute and can not be implied from any provisions of law applicable.

Your second inquiry raises a question as to whether or not the officers who authorized the unlawful expenditure of public funds in this instance may be held financially responsible for the same.

In financial transactions which involve the county, the board of county commissioners is empowered to act. Their authority so to do is strictly limited to that power which is expressly or impliedly conferred by statute. As the law now exists, it is the right and duty of the board of county commissioners to pass upon all claims made against the county

and no claims against the county can be paid lawfully unless it is first submitted to them (Section 2460, General Code of Ohio). Let it be clearly understood that the word "claim" as it is used here can only refer to those claims which are authorized by statute. Therefore, in allowing a claim it becomes the duty of the county commissioners to be sure that that claim is based upon some statute or which rises out of the performance of some authorized contract and is not a mere demand unsupported by law (*Jones* vs. *Lucas,* 57 O. S., 189).

The case in question presents a circumstance where the board of county commissioners acted upon a demand which was clearly not a claim. It was in fact a demand unsupported by law in any way and in such action upon it, there was a violation of duty to the county. There can be no question here as to this action of the commissioners binding the county, for it was wholly unauthorized. Moreover, to use the language of the Jones case, supra, "the board of county commissioners is wholly without authority to sanctify a demand illegal because of being upon a subject which can admit of no claim, and thus give away the people's money. It can no more do so than can any other agency bind his principal by acts unauthorized because without the scope of his authority."

The county auditor stands in no better light when it comes to these circumstances than the county commissioners, for he too neglected his duties in drawing the warrants in question. Because of the duties imposed by law upon his office, the county auditor has often been referred to as the guardian of the county treasurer, for with the exception of money due the state which is paid under warrant of the state auditor, every dollar paid out of the county treasury is paid upon the warrant of the county auditor. Under Section 2570, of the General Code, the county auditor cannot issue a warrant for the payment of any claim unless the amount due is fixed by law and is allowed by a tribunal or officer authorized by law to do so.

It may be contended that the matter of issuing a warrant is a subservient and ministerial duty as such which the auditor may not refuse to do. This is by no means true, for though the county auditor is by virtue of his office a secretary to the board of county commissioners and though the duties of his office are primarily those of a ministerial character, he is no mere clerk of the board of county commissioners. Even in the performance of his ministerial duties he is no mere automaton and does not act as a mere machine without consciousness, duty or responsibility. On the contrary, "it is his duty to use his judgment concerning the official acts which he is called upon to perform and to act in good faith with that prudence and integrity which an honest man of ordinary prudence shall exercise under like circumstances." (11 Ohio

Jurisprudence, 364-365, *Klieb, Auditor* vs. *Mercer Co. Com.*, 4 O. C. C. N. S., 565).

Thus in the exercise of his discretion the county auditor has authority to refuse to issue a warrant if it is unauthorized or if the officer making it acted without authority. (*Kloeb, Auditor* vs. *Mercer Co. Com.*, 4 O. C. C. N. S. 569). In the case before us, an exercise of the discretion and care imposed by his office would have put the county auditor upon his guard as to the legality of the demand. His failure to exercise such discretion and care is a clear violation of his duty and by no stretch of logic can it be ignored as such.

In view of these facts which present a clear violation of duty on the part of the county commissioners and county auditor and in view of the unauthorized expenditure and loss of public funds resulting, I am of the opinion that a finding against the county commissioners and county auditor can be made in this instance.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

931.

APPROVAL—BONDS OF OAKWOOD CITY SCHOOL DISTRICT, MONTGOMERY COUNTY, OHIO, $30,000.00.

COLUMBUS, OHIO, July 29, 1937.

The Industrial Commission of Ohio, Columbus, Ohio.
GENTLEMEN:

RE: Bonds of Oakwood City School Dist., Montgomery County, Ohio, $30,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above school district dated January 1, 1928. The transcript relative to this issue was approved by this office in an opinion rendered to your commission under date of February 18, 1928, being Opinion No. 1729.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said school district.

Respectfully,
HERBERT S. DUFFY,
Attorney General.