

of House Bill No. 513 and Section 11 of House Bill No. 510 of the 88th General Assembly. In addition, you have submitted a contract bond upon which the American Surety Company appears as surety, 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 status of surety companies and 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,
GILBERT BETTMAN,
Attorney General.

2397.

LEGAL SERVICES—PROCEEDINGS TO SELL PROPERTY OF INMATE
OF INFIRMARY—PROSECUTING ATTORNEY MAY NOT BE PAID
FOR SUCH SERVICE.

SYLLABUS:

A prosecuting attorney may not legally be paid funds for his services in connection with proceedings to sell the property of an inmate of an infirmary under the provisions of Section 2548, General Code.

COLUMBUS, OHIO, September 30, 1930.

HON. F. H. BUCKINGHAM, *Prosecuting Attorney, Fremont, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“Under Section 2548 of the General Code of Ohio, an action was started in the Probate Court of Sandusky County by the Board of County Commissioners against an inmate of the county infirmary, asking for the sale of certain real estate owned by said defendant, and permission to apply the proceeds therefrom toward the maintenance and support of said inmate at the county infirmary.

Said real estate was sold according to law. In the Journal Entry approving and confirming the sale and ordering distribution, the Probate Court ordered said board to pay out of the funds realized from said sale certain items, among which was a fee to the undersigned as counsel for the Board of Commissioners.

I am not positive whether it is legal for me to accept this fee, and would appreciate your opinion as to whether or not this particular kind of service is included in the duties to be performed by the Prosecuting Attorney and covered by the compensation paid me as such officer.”

In considering your question, it will be observed that the rule that a public officer may not receive compensation other than that which is expressly provided by statute,

is so well established in this State as to require no citation of authorities. It is equally well established that when the statutes have provided a salary for an officer and defined the duties of such officer, additional compensation may not be allowed for any services which come within the scope of his duties.

Section 2548, General Code, to which you refer, reads:

“When a person becomes a county charge or an inmate of a city infirmary and is possessed of or is the owner of property, real or personal, or has an interest in remainder, or in any manner legally entitled to a gift, legacy or bequest, whatever, the county commissioners or the proper officers of the city infirmary shall seek to secure possession of such property by filing a petition in the Probate Court of the county in which such property is located, and the proceedings therefor, sale, confirmation of sale and execution of deed by such county commissioners or officer of the city infirmary shall in all respects be conducted as for the sale of real estate by guardians. The net proceeds thereof shall be applied in whole or in part, under the special direction of the County Commissioners or the proper city officer as is deemed best, to the maintenance of such person, so long as he remains a county charge or an inmate of a city infirmary.”

Clearly, the above section authorizes a suit to be instituted, which is to be conducted the same as is the sale of real estate by guardians.

Section 2917, General Code, which relates to the duties of the Prosecuting Attorney, reads:

“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. He shall be the legal adviser for all township officers, and no such officer may employ other counsel or attorney except on the order of the township trustees duly entered upon their journal, in which the compensation to be paid for such legal services shall be fixed. Such compensation shall be paid from the township fund.”

In analyzing the section last above quoted, it is clear that it is the duty of the prosecuting attorney to represent the board of county commissioners in a proceeding under the provisions of Section 2548, General Code, because such a proceeding is an action or suit. Inasmuch as the salary is definitely fixed for the prosecuting attorney it would clearly be illegal for him to receive additional compensation for his services. It therefore follows that there is no authority for the Probate Court to tax such a fee and pay it out of the proceeds of sale. While of course there are other provisions of the statute which authorize the county commissioners to employ counsel to assist the prosecuting attorney in connection with the prosecution of his business, these sections need not be discussed herein for the reason that they have no application in view of the facts stated.

In specific answer to your inquiry, you are advised that it is my opinion that a prosecuting attorney may not legally be paid funds for his services in connection

with proceedings to sell the property of an inmate of an infirmary under the provisions of Section 2548, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2398.

MORAL OBLIGATION—COMPENSATION OF ATTORNEY ASSISTING CITY SOLICITOR WHO CANNOT LEGALLY COLLECT—NOT NECESSARY FOR COUNCIL TO SPECIALLY NAME WHERE SUCH MORAL OBLIGATION RECOGNIZED.

SYLLABUS:

In providing for the payment of a moral obligation by the council or other legislative authority of a municipality it is not necessary that the claim for which payment is being allowed be referred to, in the legislation providing for the said payment, as a "moral obligation" in specific terms.

COLUMBUS, OHIO, September 30, 1930.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"In the report of an examination of the City of Bucyrus, filed in this office on August 27, 1930, the examiner states that \$500.00 was illegally paid to Mr. S., attorney. The pertinent part of the report reads:

'On page 21 of our last report of examination of this city we discussed the proper procedure in employing special counsel.

On October 4, 1928, council by motion only, employed Attorney C. S. as an assistant to the solicitor in representing the city in the sewage disposal case before the State Board of Health, but failed to fix his compensation.

Opinion No. 1278, rendered by the Attorney General in 1916, provides that council is without authority to employ special counsel to assist the city solicitor in litigation unless a request is made therefor by the solicitor and upon such request the exclusive power of selection or apportionment rests with the solicitor.

This same opinion holds that council may fix the compensation of such special counsel on a per diem, percentage, monthly or lump sum basis.

On January 31, 1929, the city solicitor approved the payment of a voucher in favor of Mr. S. for the sum of \$500.00 for services rendered by Mr. S. as Special Counsel.

On February 4, 1929, we submitted to the Bureau the question of the legality of this claim and were informed that in view of the above noted Opinion of the Attorney General, that the attorney employed as special counsel by motion of council did not have an enforceable claim against the city and that the city auditor could not legally draw his warrant in favor of such attorney for the amount appropriated by council, which was \$500.00, or the amount of the approved voucher, but that a moral obligation did exist, however, and it was suggested that the matter be referred to council