

objection is directed to the exercise of that authority over property outside the municipality.

* * *

* * * We entertain no doubt of the power of the Legislature to confer authority upon the planning commission to examine and check plats of lands located outside of a city within a limit of three miles, and to refuse to indorse its approval thereon, and we entertain no doubt of the validity of the statute which forbids a plat to be recorded without such indorsement."

Summarizing my conclusions, it is my opinion that:

1. By the terms of Section 4366-5, General Code, the council of a city is without authority to make an appropriation in a lump sum to cover the necessary expenses and to pay the compensation of the employes of a city planning commission created and operating under the provisions of Sections 4366-1 et seq., General Code.
2. A city planning commission created and operating under the provisions of Sections 4366-1 et seq., General Code, is not a special appropriating authority, as that term is defined in Section 5625-1, General Code.
3. The home-rule provisions of the Ohio Constitution found in Article XVIII do not confer any extraterritorial authority.

In specific answer to your question, it is my opinion that where the council of a city appropriates a lump sum for the use of a city planning commission created and operating under the provisions of Sections 4366-1 et seq., General Code, for all purposes, such planning commission may not employ an engineering firm without a specific appropriation, from which the expenditure to pay the compensation of such employes may be made.

Respectfully,
 EDWARD C. TURNER,
Attorney General.

2196.

LAW JOURNAL—AUTHORIZED BY PROPER COURTS—FEES—AUTHORITY OF COUNTY COMMISSIONERS TO EXPEND MONEY FOR JOURNAL.

SYLLABUS:

1. *The publication by a daily law journal of the assignment of cases in such manner as may be prescribed by the judges of the courts of record of such county, other than the court of appeals, is authorized by Section 1695 of the General Code, but the fee for such services shall not exceed thirty-five cents for each case brought and such fees must be taxed in the costs and collected as other costs and cannot be paid from county funds.*
2. *The indication by the judges of the Common Pleas Court that certain services are necessary for the prompt administration of justice in the county, authorize the county commissioners to provide such services and to expend money therefor from the county treasury.*

COLUMBUS, OHIO, June 4, 1928.

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

GENTLEMEN:—This will acknowledge your recent communication, as follows:

"We respectfully request your written opinion upon the following:

Sections 1695, 1696 and 1697 of the General Code provide for the publication of certain calendars and notices in the Daily Law Journal, and provide a fee for such publications to be fixed by the judges not exceeding 35 cents for each case brought, to be paid by the party filing the petition and to be taxed in the costs and collected as other costs. The publishers of the Daily Reporter published in this city have been receiving compensation at the rate of three dollars per week for each Court Room for the publication of assignments of cases. There seems to be nothing in the sections referred to which authorizes any payment out of the county treasury. The publishers of the Daily Reporter depend for their right to make these publications and to receive their compensation from the county treasury upon an order of the court, a copy of which is herewith enclosed.

Question 1. Is the publication of the assignment of cases such a notice as is covered by the fee fixed in Section 1697 G. C., not to exceed thirty-five cents for each case brought?

Question 2. Is the order of the court herewith enclosed sufficient authority for the county commissioners to allow and pay three dollars per week for each court room out of the county treasury?

We are also enclosing letter addressed to this department by the publishers of the Daily Reporter."

Sections 1695, 1696 and 1697, General Code, to which reference is made, are as follows:

Section 1695. "In any county wherein is printed a daily law journal, the judges of the courts of record, other than the court of appeals, shall jointly designate such daily law journal, published in the county, wherein shall be published all calendars of the courts of record in such county, which shall contain the numbers and titles of causes, and names of attorneys appearing therein, *together with the motion dockets and such particulars and notices respecting causes, as may be specified by the judges*, and each notice required to be published by any of such judges or by statute in such causes, unless otherwise ordered by the court."

Section 1696. "In all cases, proceedings, administrations of estates, assignments and matters pending in any of the courts of record of such counties wherein legal notices or advertisements are required by law to be published, such law journal shall once a week and on the same day of the week, publish an abstract of each such legal advertisement, but the jurisdiction over, or irregularity of a proceeding, trial or judgment, shall not be affected by anything therein."

Section 1697. "For the publication of such calendars, motion dockets *and notices*, the fees for which are not fixed by law, the publisher of the paper shall receive a sum to be fixed by the judges, not exceeding thirty-five cents for each case brought, to be paid by the party filing the petition, or transcripts for appeal or lien, and to be taxed in the costs and collected as other costs, and for the publishing of abstracts of legal advertising, a sum to be fixed by the judges, not exceeding one dollar for each case, proceeding or matter, in which such advertising is had, to be taxed and collected as a part of the costs thereof."

The italicized portions are of particular importance with reference to the questions you present.

You state that the publishers of the Daily Reporter are depending for their right to receive the compensation mentioned upon an order of the Common Pleas Court of Franklin County, a copy of which you enclose and which is as follows:

“Common Pleas Court, Franklin County, Ohio.

ORDER.

The Judges of this Court having in 1900, upon the Motion of the Franklin County Bar, duly ordered and requested publication in the Daily Reporter the assignment of cases for trial in the Common Pleas Court, rooms at three dollars (\$3.00) per week each, the publishers of the Daily Reporter to deliver each week a sufficient number of copies of The Daily Reporter to the Clerks Office or Court Room to enable Attorneys or litigants who are not subscribers to secure free copies for their assignments.

This service having been duly paid for by the County Commissioners of said county and the publication of these assignments having been continued by virtue of said order and request, as one of the things necessary for the prompt administration of justice in accordance with the findings in the case of *Trumbull County vs. Hutchins*, 11 Ohio, p. 368.

But the order there made, for the guidance of the county commissioners, having been mislaid or lost and cannot now be found for the information and guidance of said commissioners, it is now here requested that the publication of these assignments for the common pleas court rooms be continued by the said commissioners as a continuing order and request beginning September 30th, 1900, and this order and request be entered as of that date.

(Signed)

E. B. Dillon,
C. M. Rogers,
F. M. Bigger,
E. B. Kinkead,
M. G. Evans,
Frank Rathmell, JJ.”

The nunc pro tunc order was made on June 29, 1912, and is recorded in the miscellaneous records of the court.

I am further in receipt of a letter from the publishers in which their views are set forth as follows:

“The publication authorized by this order of the court is not covered by the sections cited, but is the list of cases that are assigned by the Assignment Commissioners, or are stipulated for hearing by counsel on different dates. These cases are listed in our paper under the various captions of ‘Jury Active List’, ‘Engaged Counsel Jury’, ‘Equity Active List’, ‘Engaged Counsel Equity’ and ‘Set Cases’.

There is a constant daily change in these lists by the elimination of cases disposed of by the court, or transferred to other dates by the attorneys, and of new cases assigned to the active lists to be presented to the courts in their serial order, as promptly as they are reached.

It is necessary, of course, for this information and the status of these cases to be presented to the attorneys interested at all times. The publication of them in the Daily Reporter avoids the necessity of the court notifying all the attorneys personally of the changes that are made, and the necessity of the attorneys telephoning to the assignment commissioner or calling in person to find out about their cases.

The Bureau also inquires as to whether or not the order of the court is sufficient authority to the county commissioners for the payment of this charge. The order of the court distinctly states that the publication of these assignments is necessary for the proper administration of their courts and cites a decision of the Ohio Supreme Court which holds that the County Commissioners are warranted in defraying the costs of such things as are necessary for this purpose.

It would seem to be clear that the courts are entitled to have provided for their use all things that are necessary for the administration of justice, else the courts will be useless. If the publication of such assignments, as are covered by this order, are necessary, the expense of such publication would certainly be warranted."

I am unable to agree entirely with the position taken by the publishers in this matter. Their argument is premised upon the fact that the publication authorized by this order is not covered by Sections 1695, 1696 and 1697, *supra*. That is to say, the contention is made that the services performed as to publication, pursuant to this court order, are something in addition to and different from the services which are comprehended within the section cited.

The language of the court order is general and simply directs the publication in the Daily Reporter of the assignment of cases for trial in the Common Pleas Court rooms. It is questionable whether or not the various listings described in the letter of the publishers are necessary to comply with the court order and the determination of this question is, in my opinion, immaterial. The italicized portion of Section 1695, *supra*, clearly comprehends that the judges shall specify just what notices with respect to the causes pending in the court require publication, and Section 1697, *supra*, as clearly provides that for the publication of the notices so specified the publisher shall receive not exceeding thirty-five cents for each case. As you observe, it is clear that there is nothing in these sections which authorizes any payment out of the county treasury. The maximum amount of thirty-five cents for each case is to be taxed in the costs and collected as other costs and consequently the litigants, and not the county, bear the cost of publication.

I have accordingly reached the conclusion that whatever may be the character of publication which the judges see fit to require, the cost thereof is comprehended within the limitations prescribed by Section 1697 of the Code and must be taxed as costs in the individual cases. The assignment of cases for trial in the individual court rooms being certainly a notice within the meaning of that term as used in Section 1695 of the Code, the cost thereof is included within the maximum of thirty-five cents prescribed by Section 1697 of the Code.

Categorically answering your first question, therefore, I am of the opinion that the publication of the assignment of cases is such a notice as is covered by the fee fixed in Section 1697 of the Code, not to exceed thirty-five cents for each case brought.

Before answering your second question it becomes necessary to analyze the purpose and effect of the court order heretofore quoted. I am satisfied that this order has not the force and effect of a judicial decree. It was made in an *ex parte* proceeding and by its terms does not purport to do anything other than to request the county commissioners to continue the publication of the assignments in the same manner in which they have been published in the past. It is true that the court indicates that three dollars per week for each court room should be paid, but I do not believe that this language can be interpreted as anything other than an indication of the reasonableness of that amount for the services to be performed. This would in no way be binding upon the county commissioners if the board were inclined to question the reasonableness of the amount. As I understand your question, however, the county commissioners have been making the allowance in accordance with the recommendation of the judges

and you inquire whether or not the commissioners have, by reason of the order, authority to make the payment in question.

If the services to be performed by the publishers of the Daily Reporter, under this order and request of the court, were confined solely to the publication hereinabove referred to, the answer to your second question would be obvious. That is to say, the sanction of the judges of the court, by an *ex parte* order, of the payment from the county treasury for something which the statutes specifically provide should be taxed as costs in the case and paid by the litigant, would not authorize the county commissioners to order the payment from the county treasury.

The services supplied by the publishers under the order in question are, however, of two classes. In so far as the publication of the assignment of cases for trial is concerned, no payment from the county treasury is justified. It is to be observed, however, that the order further recites that the publishers are to deliver each week a sufficient number of copies of the Daily Reporter to the clerk's office or court room to enable attorneys and litigants, who are not subscribers, to secure free copies for their assignments. This service is in addition to and over and above the services with respect to publication. I assume that this portion of the agreement is being fulfilled by the publishers. The court has said in its entry that this service is one of the things necessary for the prompt administration of justice. The case of *Trumbull vs. Hutchins*, 11 Ohio 368, is cited in the order. In that case the clerk of the Common Pleas Court had purchased a press and seal for the use of the court, the old one having been worn out. The commissioners were not consulted, nor had they authorized the purchase, and the clerk brought an action for the amount expended by him against the county commissioners. The Supreme Court ruled that it was the duty of the Secretary of State to furnish seals and consequently reversed the judgment in favor of the clerk. In the course of the opinion, however, on page 371, appears the following:

"It is the legal duty of the county commissioners to furnish all things coupled with the administration of justice within the limits of their own county. It is their duty to furnish suitable and convenient buildings for holding court, at the expense of the county; and fire-proof offices for the use of the clerk, and for the preservation of the records and papers connected with the business of the court. In fitting up their court rooms and offices, it is the duty of the commissioners to fit them up as court rooms and clerks' offices, and this requires that they should be supplied with, and contain those things which are necessary to enable the officers for whose public use they are fitted up to perform their official duties."

From the fact that the judges in the present instance have made specific reference to this case, the conclusion must be drawn that they regarded the publication of the assignment of the cases and the furnishing of the free copies as necessary for the proper administration of justice. That it is the duty of the county commissioners to furnish all things necessary to the proper administration of justice can scarcely be gainsaid. The language of the court, quoted above, is emphatic. A further case of similar character is that of *State ex rel. Cooper vs. Armstrong*, 19 Ohio, p. 116. There the sheriff of Hamilton County had expended money in boarding and caring for two juries in the trial of a murder case. The court had especially ordered the expenditure of the money as being necessary for the furtherance of the administration of justice. The auditor having refused to approve the expenditure, mandamus action was instituted. The court's opinion, found on page 125, is as follows:

"There is no difference of opinion amongst our number, in respect to the justice of this claim, and the propriety of the expenditure by the sheriff, under the circumstances.

Indeed we would with one voice unite in advising the defendant to audit and allow the account as a proper charge against the county of Hamilton, but we do not see the way clear to carry out the remedy by mandamus, as the law no where, in express terms, makes it the duty of the auditor to act upon the allowance of the court, in cases of this sort.

A majority of the court, however, believe it to be a necessary incident to their authority to make a provision for the sustenance and care of juries when called to administer the criminal laws of the state, in any county; and as the speediest way of reimbursing the sheriff for money advanced by him for this salutary purpose, they will direct the county auditor to consider an account of this character, audited and allowed by the court, as 'a just demand against the county, settled and allowed by a tribunal authorized by law to do so.' "

From these cases I believe it may properly be said that courts, as a necessary incident to their power, may require that expenditure be made for such things as they deem necessary for the proper administration of justice. The duty of furnishing these necessities rests, however, in the first instance on the county commissioners.

Sections 2418 and 2419 of the General Code are as follows:

Section 2418. "Until proper buildings are erected for the permanent seat of justice in a county, the commissioners shall provide a suitable place for holding the courts thereof."

Section 2419. "A court house, jail, public comfort station, offices for county officers and an infirmary shall be provided by the commissioners when in their judgment they or any of them are needed. Such buildings and offices shall be of such style, dimensions and expense as the commissioners determine. They shall also provide all the equipment, stationery and postage, as the county commissioners may deem necessary for the proper and convenient conduct of such offices, and such facilities as will result in expeditious and economical administration of the said county offices. They shall provide all room, fire and burglar-proof vaults and safes and other means of security in the office of the county treasurer, necessary for the protection of public moneys and property therein."

These sections place the responsibility for providing suitable quarters and facilities upon the county commissioners who, under the provisions of the budget law (Section 5625-1 et seq. of the General Code) constitute the taxing authority of the county and hence responsible for the appropriations thereof.

In proper and orderly budget procedure the court should indicate to the county commissioners, as the taxing authority, such things as it deems essential to the administration of its business. This is what was done by the order of the judges heretofore quoted. That order indicated to the county commissioners that the furnishing of free copies of the Daily Reporter to the court rooms, in order to enable attorneys and litigants not subscribers thereto to be informed as to the assignment of cases, was regarded by the court as essential to its proper administration. It thereupon became the duty of the county commissioners, in so far as that board was able so to do, to provide those things which the judges deemed essential. In my opinion the expression of the court is ample authority for the commissioners to make provision for the furnishing of the free copies so requested. Whether or not they might be compelled by mandamus to make provision therefor is not before me, since, as I understand your question, the commissioners have cooperated with the court and furnished the service in question.

I do not wish to be understood as implying that the court has the right to fix the price to be paid by the county commissioners for the services in question. The indication in the order as to the price is, as I have before stated, merely the view of the court as to the reasonableness of the price. If the commissioners can furnish the service which the court desires at another price, their duty would be fulfilled. That is to say, if the court needed new desks or chairs, I doubt its power to prescribe the amount to be paid therefor, since the commissioners are vested with discretion as to the character of the furnishings to be provided and their discretion will not be disturbed in the absence of its abuse.

From the facts before me, I can place no definite estimate upon the value of the service performed by the publishers of the Daily Reporter under the court order in question other than those services performed in connection with the publication of the assignment of cases. The determination of the value of these services is after all a matter for the county commissioners, whose judgment thereon should not be disturbed in the absence of its abuse. Inasmuch as they have been paying the amount provided for in the order, I assume that they are of the opinion that such amount is reasonably commensurate with the services performed. In this connection, however, I am advised that the facts are such as would scarcely warrant payment of such a sum for the services performed, disregarding the matter of publication. Your communication does not disclose these facts and I am not fully advised thereon. Accordingly, upon this phase of the matter I express no opinion.

My conclusion is that, by their order heretofore quoted, the judges of the Common Pleas Court of Franklin County have indicated that certain services to be performed by the publishers of the Daily Reporter are essential to the prompt administration of justice and that such order authorizes the county commissioners to make provision for such services and expend county funds in so doing.

Respectfully,
 EDWARD C. TURNER,
Attorney General.

2197.

ROAD IMPROVEMENT—"PENDING PROCEEDING" UNDER SECTION 26, GENERAL CODE—NOT ESSENTIAL THAT ESTIMATED ASSESSMENTS ON BENEFITED LAND BE SHOWN BY COUNTY SURVEYOR PRIOR TO PASSAGE OF RESOLUTION BY COMMISSIONERS—SECTION 5654-1, GENERAL CODE, DISCUSSED.

SYLLABUS:

1. *Where prior to January 2, 1928, the effective date of the Norton-Edwards Act (112 v. 430), a petition, signed by more than fifty-one per cent of the land owners to be specially assessed, was filed with the county commissioners praying the improvement of a county road, and the township trustees of the township, in which such road was situated, by resolution, agreed to pay twenty-five per cent of the cost of such improvement, which resolution was duly accepted by the county commissioners, and the county commissioners, by resolution, declared that public convenience and public welfare required such improvement to be made and apportioned the cost thereof, fixed the route and termini of said road and ordered the county surveyor to make the necessary surveys, plans, profiles, estimates and specifications, the proceedings looking towards the improvement of said road were pending proceedings, and under the terms of Section 26, General Code, and Section 91 of the Norton-Edwards Act (Section 1230, General Code), such proceedings should be completed under the statutes as they existed prior to the effective date of said Norton-Edwards Act.*