

5328.

COUNTY COMMISSIONERS—MAY APPOINT ASSISTANT CLERKS TO SUCH BOARD TO PERFORM POOR RELIEF ADMINISTRATIVE WORK.

SYLLABUS:

The Board of County Commissioners of a county have authority by virtue of the provisions of Section 2409, General Code, if they find it necessary for the clerk to devote his entire time to the discharge of the duties of the position, to appoint a Clerk in place of the County Auditor and such necessary Assistants to such Clerk as the Board of County Commissioners deems necessary. Such Clerk or his Assistant may be assigned to poor relief duties which are incumbent upon the Board of County Commissioners to perform and may be paid out of the general fund of the county. Section 5 of House Bill No. 627 enacted in the First Special Session of the 91st General Assembly, does not prohibit the payment of salaries to such Assistant Clerks to the Board of County Commissioners out of the general fund of the county in excess of the limitations laid down in Section 5 of House Bill No. 627.

COLUMBUS, OHIO, April 4, 1936.

HON. LOUIS J. SCHNEIDER, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR: I am in receipt of your communication asking my opinion as to the power of the County Commissioners to appoint Assistant Clerks to the Board of County Commissioners to perform poor relief administrative work for the county. The Resolution of the County Commissioners enclosed with your request reads as follows:

“BE IT RESOLVED by the Board of County Commissioners of Hamilton County, Ohio, that the Prosecuting Attorney be and he is hereby requested to render an opinion to this Board as to its authority in appointing an Assistant Clerk to the Board of County Commissioners of Hamilton County, Ohio, for the purpose of directing relief for Hamilton County, and as to its authority in paying to said Assistant Clerk his salary from the general fund of the county, and

BE IT FURTHER RESOLVED that in said opinion the Prosecuting Attorney shall advise this Board as to its authority in appointing an Assistant Clerk to the Board of County Commissioners of Hamilton County, Ohio, to assist in the handling

of relief matters for Hamilton County, Ohio, and as to its authority in paying to said Assistant Clerk his salary from the general fund of the County, and

BE IT FURTHER RESOLVED that the Prosecuting Attorney shall request an opinion from the Attorney General of the State of Ohio as to whether such action by said Board of County Commissioners of Hamilton County, Ohio, would be in conformity with the laws of Ohio.

Adopted at a regularly adjourned meeting of the Board of County Commissioners this 11th day of March, A. D., 1936."

Section 2409, General Code, provides as follows:

"If such board (referring to the Board of County Commissioners) finds it necessary for the clerk to devote his entire time to the discharge of the duties of such position, it may appoint a clerk in place of the county auditor *and such necessary assistants* to such clerk as the board deems necessary. Such clerk shall perform the duties *required* by law and *the board*."

(Insertion and italics ours.)

The "duties required by law" are those clerical duties set out in Section 2406, General Code, which provides:

"The clerk shall keep a full record of the proceedings of the board, and a general index thereof, in a suitable book provided for that purpose, entering each motion with the name of the person making it on the record. He shall call and record the yeas and nays on each motion which involves the levying of taxes or the appropriation or payment of money. He shall state fully and clearly in the record any question relating to the power and duties of the board which is raised for its consideration by any person having an interest therein, together with the decision thereon, and shall call and record the yeas and nays by which the decision was made. When requested by a party interested in the proceedings or by his counsel, he shall record any legal proposition decided by the board, the decision thereon and the votes by which the decision was reached. If either party, in person or by counsel, except to such decision, the clerk shall record the exceptions with the record of the decision."

However, it is true that the Clerk of the Board of County Commissioners and Assistant Clerks of the Board of County Commissioners

are also to perform duties "required by the Board." The duties that the Board may impose upon the Clerk or Assistant Clerks are those only which relate to matters coming under the jurisdiction of the Board of County Commissioners. See *State, ex rel. Landis v. Commissioners*, 95 O. S., 157, 161.

It was held in the case of *State, ex rel. Spira v. Commissioners of Cuyahoga County*, 32 O. App., 382, that Section 2409, General Code, quoted supra, gives authority to the Board of County Commissioners to assign the Clerk or Assistant Clerks duties other than those purely clerical enumerated in Section 2406, General Code. The second branch of the syllabus of that case states:

"2. Board of county commissioners appointing assistant clerk by authority of Section 486-8, General Code, held to have authority to assign to clerk or his assistant duties other than those purely clerical enumerated in Section 2406, and could under Section 2409, providing for clerk's performance of duties required by law and by the board, require clerk and his assistants to perform duties in respect to matter of investigation of claims against county."

The basic reasoning for this construction of Section 2409, General Code, is stated on page 387, as follows:

"It is undoubtedly the duty of the court to give full effect to every word of the statute. The meaning of the words 'by the board,' in defining the duties of a clerk, is obvious and plain, leaving no room for ambiguity or doubt. In order to give full effect to the language used in Section 2409, we are led to the conclusion that the words, 'such clerk shall perform the duties required * * * by the board,' were inserted intentionally for the reason that the legislature felt that, in view of the many responsibilities and the varied and divers duties which are imposed on the board of county commissioners, it would be conducive to more efficient administration if the county commissioners are empowered to add to the duties imposed upon the clerk and his assistants by law, and thus assist the commissioners to more efficiently perform their duties."

It is clear that the Board of County Commissioners, both under the permanent poor relief statutes, Sections 3476, et seq., General Code, and under later legislative poor relief enactments, have clearly defined poor relief duties to perform and it therefore follows that Assistant Clerks

of the Board of County Commissioners may be assigned to such poor relief duties. Consequently, by virtue of the authority provided in Section 2409, General Code, the Board of County Commissioners, if they find "it is necessary for the Clerk to devote his entire time to the discharge of the duties of such position," may appoint a Clerk in place of the County Auditor *and such necessary assistants to such Clerk as the Board deems necessary*, and such Clerk or Assistant Clerks may be assigned poor relief duties to perform inasmuch as the Board of County Commissioners have such poor relief duties imposed upon them by statute.

It is also clear that the salaries of such appointees may be paid from the general fund of the county, as Section 2413, General Code, provides:

"The board of county commissioners shall fix the compensation of all persons appointed or employed under the provisions of the preceding sections, which, with their reasonable expenses shall be paid from the county treasury upon the allowance of the board. No provisions of law requiring a certificate that the money therefor is in the treasury shall apply to the appointment or employment of such persons."

The only remaining consideration with respect to the inquiry, is whether or not the above procedure would violate the provisions of House Bill No. 627, enacted in the First Special Session of the 91st General Assembly, if the salaries paid are in excess of those allowed in Section 5 of House Bill No. 627. Section 5 of House Bill No. 627, provides in substance that the costs of administration in a county "paid out of *the funds created by or distributed under this act* shall not exceed five (5%) per cent of the total amount of respective monthly expenditures authorized by this act," and that "no salary or compensation to be paid from the funds created by this act shall be in excess of one hundred fifty (\$150.00) dollars per month and that for only one such employee, or person, except in counties having a population of more than fifty thousand persons, in which only one such employee, or person, may be paid from the herein established fund at the monthly rate of ten (\$10.00) dollars additional for each fifty thousand of population in excess of said fifty thousand persons as established by the last federal census."

It should be noted that with respect to a county the "funds created by this act" can only mean the "county relief fund" created by virtue of Section 4 of House Bill No. 627. A reading of Section 4 of House Bill No. 627 clearly shows that money paid to Assistant Clerks of the Board of County Commissioners out of the general fund of the county in no way could ever become a part of "the county relief fund." Consequently, in my opinion, the prohibitions of Section 5 of House Bill No.

627 applying only to "funds created by or distributed under this act" are no deterrent to the procedure outlined in the Resolution of your Board of County Commissioners, even though the salaries paid to such Assistant Clerks of the Board of County Commissioners may exceed the limitations laid down in Section 5 of House Bill No. 627.

Specifically answering your inquiry, it is my opinion that the Board of County Commissioners of a county have authority by virtue of the provisions of Section 2409, General Code, if they find it necessary for the Clerk to devote his entire time to the discharge of the duties of the position, to appoint a Clerk in place of the County Auditor and such necessary Assistants to such Clerk as the Board of County Commissioners deems necessary. Such Clerk or his Assistants may be assigned to poor relief duties which are incumbent upon the Board of County Commissioners to perform and may be paid out of the general fund of the county. Section 5 of House Bill No. 627 enacted in the First Special Session of the 91st General Assembly, does not prohibit the payment of salaries to such Assistant Clerks to the Board of County Commissioners out of the general fund of the county in excess of the limitations laid down in Section 5 of House Bill No. 627.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5329.

SALARY—PHYSICIAN FOR INDIGENTS ON RELIEF ROLLS—
NOT INCLUDED AS AN ADMINISTRATION COST.

SYLLABUS:

The payment of a monthly salary to physicians for the rendition of medical services to all the indigents in a county on the relief rolls is not an administration expenditure and is not a salary or compensation of an administrative official or employe within the purview of Section 5 of House Bill No. 627, enacted in the First Special Session of the 91st General Assembly.

COLUMBUS, OHIO, April 4, 1936.

HON. ALVIN F. WEICHEL, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR: I am in receipt of your communication which reads as follows:

"With reference to House Bill 627, Section 5, will you kindly advise as to your interpretation of administrative costs,