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1. BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES—LIMITED BY LAW TO MAKING FINDINGS AGAINST PUBLIC OFFICERS, FORMER PUBLIC OFFICERS OR PRIVATE PERSONS—WHERE EXAMINATION REVEALS ILLEGAL EXPENDITURE OF PUBLIC MONEY OR THERE HAS BEEN CONVERSION OR MISAPPROPRIATION OF PUBLIC PROPERTY.
2. BUREAU WITHOUT AUTHORITY TO MAKE FINDINGS IN FAVOR OF PRIVATE PERSONS WHO FAILED TO PRESENT CLAIMS AGAINST A TRUST FUND ESTABLISHED UNDER SECTION 286 G. C.

## SYLLABUS:

1. The Bureau of Inspection and Supervision of Public Offices is limited by law to making findings against public officers, former public officers or private persons when its examination reveals that there has been an illegal expenditure of public money or that any public property has been converted or misappropriated.

2. The Bureau of Inspection and Supervision of Public Offices is without authority to make findings in favor of private persons who have failed to present claims against a trust fund established under and pursuant to the provisions of Section 286 of the General Code of Ohio.

Columbus, Ohio, September 1, 1950

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:

“Section 286, General Code, reads in part:

“If the report sets forth that any public money has been illegally expended, or that any public money collected has not been accounted for, or that any public money due has not been collected, or that any public property has been converted or misappropriated, the officer receiving such certified copy of such report, other than the auditing department of the taxing district, may, within ninety days after the receipt of such certified copy of report, institute or cause to be instituted, and each of said officers is hereby authorized and required to so do, civil actions in the

proper court in the name of the political subdivision or taxing district to which such public money is due or such public property belongs, for the recovery of the same and shall prosecute, or cause to be prosecuted the same to final determination. \* \* \*

“This portion of Section 286 sets forth the duty of local officials when the report of an examination discloses that public money or public property has been illegally expended or appropriated.

“In the case of *State v. Maharry*, 97 O. S. 272, 119 N. E. 822, it was held that the actions provided for in Section 286 to recover public money or money wrongfully taken or held, is not limited to public officers or former officers, but also lie against private persons.

“Upon the basis of the foregoing, the Bureau of Inspection and Supervision of Public Offices makes findings for recovery against both officers and private persons, when an examination of public records discloses that public money or public property has been illegally expended, converted or withheld.

“Question: Is it the duty of the Bureau of Inspection and Supervision of Public Offices to make findings in favor of private persons or firms when an examination of public records discloses that errors were made in bills filed pursuant to orders placed or contracts made by authorized public officials, for the payment of which encumbrances had been properly certified by the fiscal officer under Section 5625-33, General Code, resulting in the vendor not receiving the full amount he could legally have been paid?

“In the course of his tax collections, the county treasurer occasionally, through inadvertence, accepts double payments and overpayments of items charged to him on the tax lists and duplicates.

“Section 286, General Code, makes the following provision for disposition of such items:

“The term “public money” as used herein shall include all money received or collected under color of office, whether in accordance with or under authority of any law, ordinance or order, or otherwise, and all public officials shall be liable therefor. All moneys received under color of office and not otherwise paid out, according to law, shall be due to the political subdivision or taxing district with which the officer is connected and shall be by him paid into the treasury thereof to the credit of a trust fund, *there to be retained until claimed by the lawful owner; if not claimed within a period of five years after having been so credited to said special trust fund, such money shall revert to the general fund of the political subdivision where collected.*’

(Underscoring the writer’s.)

“When the report of an examination discloses that the county treasurer has accepted double or overpayments of tax or assessment items, and has placed such items in a special trust fund as required under that portion of Section 286 quoted above; that refunds have been made when demand has been made by persons who originally made such overpayments; and the examiner has checked to determine that the requirements of Section 286 have so far been complied with.

“Question: Is it the further duty of the examiner to make direct findings in favor of those persons who have not presented their own claims?”

The authority of your Bureau in regard to inspection of public offices and making findings as the result of such inspection is found in Sections 274 to 291, inclusive, of the General Code of Ohio. Section 284 of the General Code provides that:

The bureau of inspection and supervision of public offices, shall examine each public office. Such examination of township, village and school district offices shall be made at least once in every two years and all other examinations shall be made at least once a year, except that the offices of justices of the peace shall be examined at such times as the bureau shall determine. On examination, inquiry shall be made into the methods, accuracy and legality of the accounts, records, files and reports of the office, whether the laws, ordinances and orders pertaining to the office have been observed, and whether the requirements of the bureau have been complied with.”

Section 286 of the General Code provides that the report shall set forth the results of examinations with respect to each and every matter and thing inquired into, signed by the examiner in charge, and shall be filed in the office of the Bureau, and certified copies of such report are required to be filed with certain designated officials. Your inquiry indicates that the proper official in the instant case is the prosecuting attorney. It is apparent from a reading of Section 286 of the General Code that the examiner is required to report each and every matter inquired into, and if said examiner inquires into a contract between a county and a private person, such should be reported. However, I must conclude that such report may go no further than setting forth the contract, the certificate of funds available, bills paid pursuant to same, the proper fund against which the contract is chargeable and balance in said fund. Whether or not the contract has been fully complied with would be a question of fact to be determined by the court and not the examiner in charge.

In the case of Heiser Bros. Co. v. City of Cleveland, 44 O. App. 560, the first branch of the syllabus reads:

“In an action instituted under provisions of Section 274 et seq., General Code, when a certified copy of any portion of a finding and report made by examiners under the Bureau of Inspection and Supervision of Public Offices is offered in evidence as provided in Section 286-1, General Code, such report is competent in so far as it sets forth findings of fact. Arguments, deductions, inferences and conclusions of law, incorporated in such report, are incompetent, and the admission in evidence as a whole of a report containing such incompetent evidence is erroneous and prejudicial.”

It is further provided in Section 286 of the General Code, in part:

“If the report sets forth that any public money has been illegally expended, or that any public money collected has not been accounted for, or that any public money due has not been collected, or that any public property has been converted or misappropriated, the officer receiving such certified copy of such report, other than the auditing department of the taxing district, may, within ninety days after the receipt of such certified copy of such report, institute or cause to be instituted, and each of said officers is hereby authorized and required so to do, civil actions in the proper court in the name of the political subdivision or taxing district to which such public money is due or such public property belongs, for the recovery of the same and shall prosecute, or cause to be prosecuted the same to final determination. Any mayor of a village is hereby authorized and required to employ legal counsel for such purpose, who shall be paid out of the treasury of the village on voucher approved by the mayor and on warrant of the village clerk, and the amount of such compensation shall constitute a charge against said village notwithstanding the failure of the council thereof to appropriate money or levy funds therefor.

“\* \* \* No claim for money or property found in any such report to be due to any public treasury or custodian thereof in any such report shall be abated or compromised either before or after the filing of civil actions, by any board or officer or by order of any court unless the attorney general shall first give his written approval thereof.

“The term ‘public money’ as used herein shall include all money received or collected under color of office, whether in accordance with or under authority of any law, ordinance or order, or otherwise, and all public officials shall be liable therefor. All money received under color of office and not otherwise paid out according to law, shall be due to the political subdivision or taxing district with which the officer is connected and shall be

by him paid into the treasury thereof to the credit of a trust fund, there to be retained until claimed by the lawful owner; if not claimed within a period of five years after having been so credited to said special trust fund, such money shall revert to the general fund of the political subdivision where collected. \* \* \*"

It is true that in the case of *State ex rel. v. Maharry*, 97 O. S. 272, the court held in the fourth branch of the syllabus:

"These statutes (§274 et seq.) are comprehensive enough to warrant actions against either public officers, former public officers or private persons." (Parenthetical matter added.)

However, in the course of the opinion, at page 276, it was said:

"What is the paramount purpose of these statutes? It is to protect and safeguard public property and public moneys. Finally we have come to regard all public property and all public moneys as a public trust. The public officers in temporary custody of such public trusts are the trustees for the public, and all persons undertaking to deal with and participate in such public trust do so at their peril; that is, the rights of the public, as beneficiaries, are paramount to those of any private person or corporation."

It is further said in the opinion, after quoting the pertinent portion of Section 286, supra:

"It should be noted that the statute covers 'any public moneys \* \* \* illegally expended \* \* \* or any public property \* \* converted or misappropriated.'

"When either of these two facts appear, that is (a) illegal expenditure of public money or (b) any public property converted or misappropriated, then there is warrant and authority in law for bringing the action under these statutes."

It is quite apparent from the facts presented that there has been no illegal expenditure of public money nor a conversion or misappropriation of any public property, and thus no action would be warranted under Section 286 of the General Code.

As to your second question, the facts as set forth in your communication indicate that all public moneys received by the treasurer have been properly accounted for. In view of that fact, I am unable to see on what basis an action may be instituted. In the absence of proper grounds, I must conclude that the Bureau is without authority to make findings in favor of a private person.

In view of the foregoing, it is my opinion that:

1. The Bureau of Inspection and Supervision of Public Offices is

limited by law to making findings against public officers, former public officers or private persons when its examination reveals that there has been an illegal expenditure of public money or that any public property has been converted or misappropriated.

2. The Bureau of Inspection and Supervision of Public Offices is without authority to make findings in favor of private persons who have failed to present claims against a trust fund established under and pursuant to the provisions of Section 286 of the General Code of Ohio.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.