

4880.

## PREMIUM—BONDS REQUIRED BY STATE OF EMPLOYES OF COUNTY OFFICERS—PAID BY COUNTY COMMISSIONERS.

## SYLLABUS:

*The premiums on the bonds of deputies, assistants, bookkeepers, clerks and other employes duly appointed or employed by county officers, which bonds are required to be given to the state by such officers by virtue of section 2981, General Code, must be paid by the county commissioners.*

COLUMBUS, OHIO, January 9, 1933.

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

DEAR SIR:—I acknowledge receipt of your communication which reads in part as follows:

“Under sections 9573 and 9573-1 of the corporation code can the elected county officers bond everyone of their clerks, employees and deputies and then make the county pay the premium, in spite of the fact that the elected county officer is the one who is legally bound to account to the county for the acts of his clerks, employees and deputies, and such elected officer could take a bond from any of his clerks, deputies or employees for their faithful performance to him. We would like a construction of Sections 2981, 9573 and 9573-1 in connection with the code sections under clerk of courts, sheriff, auditor and treasurer, as said sections do not provide for the payment of premiums on bonds of deputies, clerks and employees. Also as to whether or not you consider the payment of said premiums mandatory after taking into consideration the sections referred to in this letter.”

In the chapter relating to salaries of county officers, section 2981, General Code, reads as follows:

“Such officers may appoint and employ necessary deputies, assistants, clerks, bookkeepers or other employes for their respective offices, fix their compensation, and discharge them, and shall file with the county auditor certificates of such action. Such compensation shall not exceed in the aggregate for each office the amount fixed by the commissioners for such office. When so fixed, the compensation of each duly appointed or employed deputy, assistant, bookkeeper, clerk and other employe shall be paid semi-monthly from the county treasury, upon the warrant of the county auditor. Each of such officers may require such of his employes as he deems proper to give bond to the state in an amount to be fixed by such officer with sureties approved by him, conditioned for the faithful performance of their official duties. Such bond with the approval of such officer, indorsed thereon, shall be deposited with the county treasurer and kept in his office.”

The 87th General Assembly amended sections 2399, 2559, 2633, 2751, 2784, 2824, 2868 and 2911, General Code, relating to the bonds required to be given by the county commissioners, auditor, treasurer, recorder, surveyor, sheriff, cor-

oner, clerk of the common pleas court and prosecuting attorney. 112 O. L. 111. These sections as amended provide that the expense or premiums for such bonds shall be paid by the county commissioners and charged to the general fund of the county. Prior to this amendment there was no provision for the payment by the county commissioners of the premiums on such bonds except those given by the county treasurers.

The same General Assembly likewise enacted section 9573-1, General Code, which provides as follows:

“The premium of any duly licensed surety company on the bond of any public officer, deputy or employe shall be allowed and paid by the state, county, township, municipality or other subdivision or board of education of which such person so giving such bond is such officer, deputy or employe.”

The question you present is whether this provision applies to bonds, not required by law, but which may be required by county officers of their employes by virtue of section 2981, General Code.

Section 9573-1, General Code, is broad in its terms, and the bond of any public officer, deputy or employe is expressly included therein. Its terms are plain and unambiguous. If words used in a statute are free from ambiguity, there is no right to construe, nor occasion to resort to other means of interpretation. *Swetland, et al., vs. Miles*, 101 O. S. 501; *Ohio Savings & Trust Company vs. Schneider*, 25 O. A. 259. To hold that the statute does not apply to employes required by their officers to give bond by virtue of section 2981, General Code, it would be necessary to read something into the statute that is not there. It would be necessary to read into the statute after the words “any public officer, deputy or employe,” a qualifying clause such as “who is required by law to give bond.”

As stated in *Ohio Savings & Trust Company vs. Schneider, supra*, “courts cannot read into statute that which does not appear therein; it being presumed that lawmakers placed in statute all that was intended.” You suggest in your letter that in view of the fact that the elected officers are liable to the county for the acts of their deputies, clerks or employes, bonds given by them running to the state might not be enforceable against the sureties. I am of the view, however, that that fact would not prevent a county from recovering against a surety on a bond of a county employe, such loss as it may suffer as a result of such employe's default.

You also ask whether the payment of premiums is mandatory. The statute uses the word “shall”, which, in its ordinary meaning, is imperative. 59 C. J. 1080. The power to construe mandatory words as directory should be exercised with reluctance, and only where the clear intent, as shown by the context, demands such construction. 59 C. J. 1073.

“Courts should be slow to impart any other than the natural and commonly understood meaning to terms employed in framing of our statutes.

*You shall* and *you shall not* should be construed as imposing imperative duties or prohibitions, unless the manifest intention of the legislature suggests a weakened sense of meaning”

*State, ex rel., vs. Commissioners*, 94 O. S. 296.

I find nothing in this statute which would justify construing the word "shall" in any other than its usual and ordinary use.

I am therefore of the opinion that the premiums on the bonds of deputies, assistants, bookkeepers, clerks and other employes, duly appointed or employed by county officers, which bonds are required to be given to the state by such officers by virtue of section 2981, General Code, must be paid by the county commissioners.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

4881.

TOWNSHIP PARK DISTRICT—TAXING UNIT AND MAY LEVY TAXES  
—TOWNSHIP TRUSTEES NOT REQUIRED TO LEVY TAX FOR  
PARK PURPOSES WHERE TOWNSHIP PARK DISTRICT EXISTS.

*SYLLABUS:*

1. *A township park district is a "taxing unit" as such term is used in sections 5625-1 to 5625-39, inclusive. General Code, and as such, has authority by virtue of the provisions of section 3424, General Code, to levy taxes on the property within the township for the maintenance of township parks.*

2. *There is no legal duty on the township trustees to levy a tax for the maintenance of township parks in townships in which township park districts have been created.*

COLUMBUS, OHIO, January 9, 1933.

HON. J. FRANK POLLOCK, *Prosecuting Attorney, Painesville, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent request for my opinion upon the following:

"The question has been raised in Lake County as to the proper method of handling the funds of Park Commissioners appointed under Section 3416, General Code, and functioning under the subsequent sections.

Section 3423 provides that the park commissioners may levy for the maintenance of the park not to exceed one-mill on each dollar, but section 5625-3 authorizes only taxing authorities to levy a tax and the park commissioners are not taxing authorities under the definition given in Section 5625-1.

In the past the township trustees have been making a levy for park purposes and turning the amount of the levy over to the park commissioners upon the receipt of the same from the auditor, and the park commissioners went ahead and handled the money without making any report to the township trustees. This is rather unsatisfactory because the trustees have no way of checking the requirements of the park board for their budget. It has been suggested that the township trustees should hold the money in their possession and pay the bills of the park commissioners upon invoices properly approved by the park commission-