

Note from the Attorney General's Office:

1939 Op. Att'y Gen. No. 39-713 was modified by
1958 Op. Att'y Gen. No. 1958-3039.

mentation of State Architect; Approval of PWA; Tabulation of bids; Letter from Auditor of State, showing all necessary papers are on file in his office.

Finding said contract in proper legal form, I have noted my approval thereon, and am returning same herewith to you, together with all other papers submitted in this connection.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

712.

BOND—ROBERT M. HANCE, MEMBER, BOARD OF TAX APPEALS, STATE OF OHIO, \$5,000.00.

COLUMBUS, OHIO, June 5, 1939.

HON. JOHN W. BRICKER, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR: You have submitted for my approval, the bond of Mr. Robert M. Hance, in the sum of \$5,000.00 with the New York Casualty Company as surety, covering Mr. Hance as a Member of the Board of Tax Appeals of the State of Ohio.

Finding said bond in proper legal form, I have noted my approval thereon, and same is transmitted herewith.

Yours very truly,

THOMAS J. HERBERT,
Attorney General.

713.

SHERIFF—WHERE HE CALLS AMBULANCE TO REMOVE PERSON INJURED ON THE HIGHWAYS—COUNTY COMMISSIONERS—WITHOUT POWER TO AUTHORIZE PAYMENT OF SUCH SERVICE—SHERIFF MAY NOT INCLUDE SUCH BILLS IN EXPENSE ACCOUNT TO BE PAID BY COUNTY.

SYLLABUS:

1. *Where a sheriff, in the investigation of a highway accident, calls an ambulance for the removal of injured persons to a hospital, it is not proper for county commissioners to authorize the payment of such bills for ambulance service.*

2. *The sheriff may not properly include such bills for ambulance services in his expense account for collection from the county.*

COLUMBUS, OHIO, June 5, 1939.

Bureau of Inspection and Supervision of Public Offices, State House Annex, Columbus, Ohio.

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

"In numerous cases of motor vehicle accidents on public highways, where the sheriff is called to investigate, and persons are found to be injured, an ambulance is called by the sheriff to transport such injured persons to a hospital.

QUESTION: May the county commissioners legally authorize payment of bills for such ambulance services; or may the cost of such service be entered upon the sheriff's expense account and be collected from the county?"

Your request is in the alternative and presents first the question as to whether the county commissioners may authorize the payment of such bills for ambulance services.

It must be remembered in approaching a question such as this that the Board of County Commissioners has only such powers as have been granted it expressly by statute or those derived by necessary implication therefrom. See *Jones, Auditor vs. Commissioners*, 57 O. S. 189.

In the case of *State, ex rel. Locher vs. Menning*, 95 O. S. 97 at page 99, the following statement is found bearing upon the right of the county commissioners to recognize and pay bills against the county:

"The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county."

In view of the preceding statements, it is obvious that for county commissioners to justify the payment of such bills, some authorization in law must be found to exist and an express or directly implied authority for the recognition of such claims is a condition precedent to their allowance. After a search of the statutes, I am unable to find any such authorization, either direct or implied, for county commissioners to recognize and authorize the payment of the type of claim you present.

The other alternative propounded by your letter is whether or not the sheriff may present and have such claim allowed as a part of his

expenses. Provision is made in Section 2997, Ohio General Code, for the allowance of expenses to a sheriff. This section is here set out:

“In addition to the compensation and salary herein provided, the county commissioners shall make allowances quarterly to each sheriff for keeping and feeding prisoners, as provided by law, for his actual and necessary expenses incurred and expended in pursuing or transporting persons accused or convicted of crimes and offenses, in conveying and transferring persons to and from any state hospital for the insane, the institution for feeble-minded youth, Ohio hospital for epileptics, boys’ industrial school, girls’ industrial home, county homes for the friendless, homes of refuge, children’s homes, sanitariums, convents, orphans’ asylums or homes, county infirmaries, and all institutions for the care, cure, correction, reformation and protection of unfortunates, and all expenses of maintaining horses and vehicles necessary to the proper administration of the duties of his office. The county commissioners shall allow the sheriff his actual railroad and street car fare and telephone tolls expended in serving civil processes and subpoenaing witnesses in civil and criminal cases and before the grand jury, and may allow his necessary livery hire for the proper administration of the duties of his office. Each sheriff shall file under oath with the quarterly report herein provided a full, accurate and itemized account of all his actual and necessary expenses, including railroad fare, street car fare, telephone tolls and livery hire mentioned in this section before they shall be allowed by the commissioners. Such statement shall show the number of the case and the court in which the service was rendered and the railroad point from which a livery rig was used.”

It will be noted, upon a reading of the above section, that expenses allowed thereunder are closely connected with and arise out of the prescribed duties of the sheriff. No blanket authority is given thereby for the payment of expenses which may arise from activities of the sheriff not expressly authorized by law. It must follow that since the Legislature saw fit to detail the instances in which a sheriff may be allowed expenses, it meant thereby to exclude instances not expressly included.

In the case of *Boes vs. Commissioners*, 7 O. N. P. (N. S.) 76 at page 78, the court in discussing Section 2997, *supra*, said:

“We understand that the rule of law is that the court shall strictly construe the statutes authorizing fees and allowances to county officers.”

Taking the situation here presented, it would appear that the action of the sheriff in calling an ambulance under the circumstances outlined by

your request is not strictly in furtherance of his prescribed duties nor primarily for the public benefit, but rather for that of the private individuals involved. This office can not consider the question from a humanitarian viewpoint but solely from the point of whether or not existing law permits such public expenditure.

From these considerations and from the fact that provision for such expenses is not enumerated in the statute providing for expense allowance for a sheriff, I am impelled to the conclusion that the sheriff may not, with propriety, include such items in his expense account for later allowance and payment by the county.

I, therefore, conclude and it is my opinion that: (1) Where a sheriff, in the investigation of a highway accident, calls an ambulance for the removal of injured persons to a hospital, it is not proper for county commissioners to authorize the payment of such bills for ambulance service; (2) nor may the sheriff properly include such bills for ambulance services in his expense account for collection from the county.

Yours very truly,

THOMAS J. HERBERT,
Attorney General.

714.

BONDS—CITY OF CLEVELAND, CUYAHOGA COUNTY,
\$5,000.00.

COLUMBUS, OHIO, June 7, 1939.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of the City of Cleveland, Cuyahoga County,
Ohio, \$5,000.

The above purchase of bonds appears to be part of two bond issues in the aggregate amounts of \$529,662.00 and \$646,500.00 of the above city dated September 1, 1937. The transcript relative to this issue was approved by this office in an opinion rendered to your Board under date of December 13, 1938, being Opinion No. 3361.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,
Attorney General.