

3474.

APPROVAL, LEASE OF SECOND FLOOR OF ROCKEFELLER BUILDING  
TO THE STATE FIRE MARSHAL FOR TWO YEARS, BEGINNING  
JUNE 1, 1926, AT AN EXPENDITURE OF \$2,400.

COLUMBUS, OHIO, June 24, 1926.

HON. G. F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my consideration a lease wherein the Coal and Iron Building Corporation of Cleveland undertakes to grant premises described as 240-242 on the second floor of the Rockefeller building to the "State Fire Marshal" for the term of two years, beginning June 1, 1926.

Under the terms of the lease the state will be required to pay the sum of \$2,400.00, payable in monthly installments of \$100.00 per month in advance.

Your attention is directed to the fact that the lease should be granted to the State of Ohio for the use and benefit of the State Fire Marshal. It is suggested that the lessors may easily correct this matter.

Finding said lease in proper form, it is hereby approved as to form with the exception above noted.

Your attention is further directed to the fact that before this lease is accepted by you on behalf of the state, a certificate of the Director of Finance should be obtained to the effect that there are funds available to cover the obligations of the contract.

Respectfully,

C. C. CRABBE,  
*Attorney General.*

3475.

MANNER OF DISTRIBUTING STATE AID MONEYS UNDER SECTIONS  
6965 TO 6972, INCLUSIVE, OF THE GENERAL CODE.

SYLLABUS:

*Payment of state aid moneys in the second year of the biennium under sections 6965 to 6972, inclusive, of the General Code, is to be made in the order in which applications are filed without reference to whether the applicant township has participated in such state aid in the first year of the biennium.*

COLUMBUS, OHIO, June 25, 1926.

HON. JOSEPH T. TRACEY, *Auditor of State, Columbus, Ohio.*

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

"The Department of Auditor of State hereby requests an opinion from the Attorney General relative to the distribution of state aid for secondary road system, as provided under the provisions of section 6965-72 of the General Code, 110 O. L. 267. The appropriation items of \$350,000 for each of the years of the biennium, as set forth in House Bill 517, stipulates that no township shall receive in excess of \$1,000 per year as state aid, and the question now arises as to the priority of the applications filed. The \$350,000 item constituting the appropriation for the first year has been allotted by this

department to the townships in the order in which they were filed chronologically, thus exhausting the entire amount. Applications continued to be filed with this office, some of which were from the townships who had participated in the appropriation of the first year.

In this connection, we desire to be advised as to whether or not the fact that a township had benefited by the allotment of \$1,000 from the first year's appropriation in any way prejudiced their privilege of consideration in the allotment of the second year's appropriation, or, should all applications be recognized in the chronological order in which they are filed, regardless of whether or not they had previously benefited."

Section 6971 of the General Code, found in 110 Ohio Laws, page 272, provides :

"For the purpose of encouraging the construction of a secondary or county system of highways and rendering effective the foregoing sections and extending necessary state aid in the construction, reconstruction or improvement of the several systems of county highways there shall be appropriated by the general assembly out of the general revenue fund of the state for use annually in each township within the state of Ohio under the provisions of this act such sum as shall be deemed just and reasonable, but in no event less than one thousand dollars or more than two thousand dollars per township per annum. All aid furnished by the state under the provisions of the foregoing sections shall be paid from such appropriations."

The General Appropriation Bill passed by the legislature April 15th, 1925, on page 44, provides :

"SECONDARY HIGHWAY SYSTEM.

H Fixed Charges and Contributions—		
H 8 Contributions .....	\$350,000.00	\$350,000.00
To be distributed in manner provided by sections 6965 to 6978, General Code (110 O. L. 267.) No township to receive in excess of \$1,000 per year as state aid.		
Total maintenance.....	\$350,000.00	\$350,000.00
		\$700,000.00"

In the case of *State ex rel. Cook et al. vs. Tracy, Auditor of State*, 113 Ohio St. page 233, found in the Ohio Law Bulletin and Reporter for November 30, 1925, section 6965 to section 6972 was discussed.

This case which was an action in mandamus seeking to compel the Auditor of State to deliver a warrant on the Treasurer of State for the sum of \$1,000.00, payable out of the appropriation to afford relief to townships by providing for the creation of a system of county highways and authorizing state aid in the construction thereof, in effect decides that \$1,000.00 out of such fund is payable to the township making application therefor in the order in which applications are made.

A. study of sections 6965 to 6972 and of the appropriation measure supra, fails to indicate that any preference should be given to townships which have not made application for such aid during the first year of the biennium.

It is therefore my opinion that the only construction which may be put upon the above section is that the payment of moneys from the state aid appropriations should be made in the order in which the applications are received and that no preference is to be shown to the townships which have not participated in the first year of the biennium.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*

3476.

COUNTY PROBATION OFFICER MAY BE ALLOWED MILEAGE FOR  
AUTOMOBILE USED ON OFFICIAL BUSINESS.

*SYLLABUS:*

*A county probation officer may legally be allowed mileage for use of his own car when used on official business.*

COLUMBUS, OHIO, June 26, 1926.

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

GENTLEMEN:—On May 1st I received the following letter from you:

“We respectfully request you to render this department your written opinion upon the following:

Question: May a probation officer legally be allowed mileage for the use of her own car on official business?”

Section 1554-1 G. C. provides for the expenses of probation officers, and the pertinent part thereof reads:

“Probation officers shall, in addition to their respective salaries, receive their necessary and reasonable traveling and other expenses incurred in the performance of their duties. Such salaries and expenses shall be paid monthly from the county treasury in the manner provided by law for the payment of the compensation of other appointees of the judge or judges of the common pleas court. (111 v. 423. Eff. July 21, 1925.)”

This section does not limit or fix this expense except to say that same shall be “necessary and reasonable” and this apparently leaves the manner of paying such expenses and how they are determined to be “necessary and reasonable” to the county commissioners.

In the case of *State, ex rel., vs. Wall*, 17 Ohio Nisi Prius (N. S.) 33, the court held that the legislature had a right to leave the fixing of compensation to local authorities.

There is no inhibition against the allowance of such mileage nor has the legislature said what are reasonable and necessary expenses.

The law does not presume that public officials will abuse a discretion and in this instance the discretion lies with the commissioners in passing on the expense account of a probation officer to say whether such account is reasonable and necessary.