

society owns, or holds under a lease, real estate used as a site thereon to hold fairs and has control and management of such lands and buildings, to appropriate annually from the general fund not to exceed two thousand dollars or less than fifteen hundred dollars for such purpose.

In passing it is deemed proper to point out that the constitutionality of acts providing for financial assistance to agricultural societies was upheld by the Supreme Court of Ohio in the case of *The State, ex rel., vs. Kerns*, 104 O. S. 550. See also *Commissioners vs. Brown*, 1. O. N. P. (N. S.) 357.

Respectfully,

EDWARD C. TURNER,
Attorney General.

745.

COUNTY COMMISSIONERS—DUTIES RELATIVE TO MAKING APPROPRIATION FOR SALARY OF DEPUTY SEALER OF WEIGHTS AND MEASURES

SYLLABUS:

1. *It is the duty of the county commissioners to make an appropriation for the purpose of paying the salary of the deputy sealer of weights and measures for an entire year and to fix said salary within the amount of said appropriation, unless, in the exercise of a reasonable discretion, such commissioners determine that, within the funds available, such an appropriation cannot be made.*

2. *Opinion No. 59, rendered under date of February 9, 1927, followed and applied.*

COLUMBUS, OHIO, July 19, 1927.

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

GENTLEMEN:—Permit me to acknowledge receipt of your request for my opinion as follows:

“You are respectfully requested to furnish this department your opinion upon the following matter:

When the commissioners of a county have fixed the compensation of a deputy sealer of weights and measures under the provisions of Section 2622, G. C., and under the provisions of Section 5649-3g G. C., have appropriated the amount so fixed for the year, may such county commissioners when the year is half up and the deputy sealer has received one-half of the year's compensation, reduce the appropriation to one-half of the original amount so that there would be no available money to pay a deputy sealer for the last one-half of the year?”

Your question requires consideration of Sections 5649-3g and 2622 of the General Code.

Section 5649-3g provides as follows:

“At the beginning of each fiscal year, the county commissioners of every county, the board of education of every school district, including county

school districts, the council of or other legislative authority of every municipal corporation, including charter municipalities, the trustees of every township, and the governing board or body of every other type of political subdivision or taxing district authorized by law to levy taxes or expend public funds, shall make appropriations classified for the several purposes for which expenditures are to be made for and during the said fiscal year, from the funds of such county, school district, municipal corporation, township, or other political subdivision or taxing district.

The appropriation measure or measures of any county or political subdivision or taxing district shall include provision for the full amount of interest, principal and sinking fund charges maturing on obligations of such county, subdivision or district during such year, excepting interest, principal or sinking fund charges the payment of which shall have been lawfully authorized and directed from the proceeds of bond issues, and may include an emergency or contingent item to provide for unanticipated emergencies or contingencies. The aggregate of all appropriations of or from the funds of any county, political subdivision or taxing district for any fiscal year shall not exceed the amount of the official estimate of revenues and balances of such county, subdivision or district as made by the budget commission, or, in case of appeal, by the tax commission of Ohio. No appropriation shall become effective until there be filed with the appropriating authority by the county auditor a certificate that the appropriation, taken together with all other outstanding appropriations, does not exceed said official estimate and in every case in which the appropriation does not exceed said estimate, the county auditor shall give such certificate forthwith upon receiving from the appropriating authority a certified copy of the appropriation measure."

This section has been construed in my opinions No. 59, issued February 9, 1927, and No. 156, issued March 8, 1927, copies of which I am enclosing herewith.

The syllabus of Opinion No. 59, *supra*, is as follows:

"1. County commissioners have full authority to fix the amount of the appropriation for deputy hire in the various county offices, and each county officer in fixing the compensation to be paid to his deputies, assistants, clerks, bookkeepers and other employes is limited to the amount of the appropriation.

2. An appropriation measure governing money for deputy hire in county offices when once passed by county commissioners, may be amended by either increasing or reducing the amount appropriated for such purpose, and the county officer appointing such deputies, assistants, clerks, bookkeepers and other employes, cannot expend in any fiscal year a greater sum for the salary of such deputies and other assistants than is fixed in the appropriation measure as amended."

The syllabus of Opinion No. 156, *supra*, reads as follows:

"1. The aggregate amount of compensation that can be paid to any public official or employee, for and during any fiscal year, is limited by the amount appropriated therefor.

2. When an appropriation is made by county commissioners for the yearly compensation of the superintendent and matron of a county children's home which is of a lesser amount than their salaries have theretofore

been fixed, it becomes the duty of the trustees of the home to fix the salaries to conform to the appropriation."

Section 2622 of the General Code provides:

"Each county sealer of weights and measures shall appoint by writing under his hand and seal, a deputy who shall compare weights and measures wherever the same are used or maintained for use within his county, or which are brought to the office of the county sealer for that purpose, with the copies of the original standards in the possession of the county sealer, who shall receive a salary fixed by the county commissioners, to be paid by the county, which salary shall be instead of all fees or charges otherwise allowed by law. Such deputy shall also be employed by the county sealer to assist in the prosecution of all violations of laws relating to weights and measures."

The county auditor is by virtue of his office the county sealer of weights and measures (Section 2615, General Code).

Section 2622, supra, makes it the duty of the county sealer of weights and measures to appoint a deputy to perform the duties prescribed by said section. This section also makes it the duty of the county commissioners to fix the salary of such deputy.

As pointed out in the hereinbefore mentioned opinions, the county commissioners may change any appropriation which they make at any time during the fiscal year, either by increasing or decreasing it, and if an appropriation is reduced it is the duty of the officers who fix salaries to readjust the salary for the position to conform to the appropriation as amended by the commissioners. This applies to the commissioners as well as any other officer. The salary which said board is required to fix must not exceed the appropriation made for such position.

In making the appropriation, however, the county commissioners may not arbitrarily refuse to appropriate for any position created by law, and it is therefore incumbent upon them to make some provision for the salary of the deputy sealer of weights and measures, *if the finances of the county are such* that said appropriation can be made. To hold otherwise would be to give the county commissioners power to nullify a specific legislative mandate. Section 5649-3g of the General Code does not require such a construction. It provides that the proper body "shall make appropriations" for the purposes for which expenditures are to be made during the fiscal year. Section 2622, General Code, provides that "expenditures are to be made" for the salary of a deputy county sealer of weights and measures.

It is therefore my opinion that it is the duty of the county commissioners to make an appropriation for the purpose of paying the salary of the deputy sealer of weights and measures for an entire year and to fix said salary within the amount of said appropriation, unless, in the exercise of a reasonable discretion, such commissioners determine that, within the funds available, such an appropriation cannot be made.

Respectfully,
EDWARD C. TURNER,
Attorney General.