

"Sec. 1182. It shall be the duty of the director to divide the state into not exceeding fifteen divisions * * *. He shall appoint and assign to each of such divisions a resident division deputy director, who shall perform such duties as may be prescribed by the director * * *. Each division deputy director shall give bond in the sum of five thousand dollars, conditioned for the faithful performance of his duties with sureties to the approval of the state highway director. * * * "

"Sec. 1182-3. * * * All bonds hereinbefore provided for shall be conditioned upon the faithful discharge of the duties of their respective positions, and such bonds * * * shall be approved as to the sufficiency of the sureties by the director, and as to legality and form by the attorney general, and be deposited with the secretary of state. * * * "

Finding said bonds in proper legal form in accordance with the foregoing statutory provisions, I hereby approve said bonds as to form and return them herewith.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3928.

SHERIFF—COUNTY COMMISSIONERS UNAUTHORIZED TO REIMBURSE IN 1935 FOR SALARY PAID TO DEPUTY SHERIFF FROM PERSONAL FUNDS OF SHERIFF IN 1934. (O. A. G. 1933, Vol. II, P. 893 APPROVED.)

SYLLABUS:

County Commissioners are not authorized to make an appropriation in 1935 for the purpose of reimbursing a sheriff for salary paid by him from his personal funds to a deputy sheriff for services rendered in 1934, when there was no appropriation therefor at the time those services were rendered. (Opinions of the Attorney General for 1933 Vol. II, page 893, Approved and followed.)

COLUMBUS, OHIO, February 8, 1935.

HON. W. RALPH PENCE, *Prosecuting Attorney, Hillsboro, Ohio.*

DEAR SIR:—Your recent letter requesting my opinion reads as follows:

"May I respectfully request your opinion upon the following:

For the year 1934 the County Commissioners appropriated to the Sheriff's funds for deputy hire the sum of fifteen hundred fifty (\$1550.00) dollars. Said funds became exhausted during the first nine (9) months of 1934.

The Sheriff employed a special deputy during the latter half of 1934 and as shown by receipts given by said Special Deputy the Sheriff paid him out of his own personal fund for October, 1934, one hundred (\$100.00) dollars; for November, 1934 one hundred (\$100.00) dollars; for December, 1934, one hundred (\$100.00) dollars making a total of three hundred (\$300.00) dollars.

Realizing that his Deputy Fund was exhausted the Sheriff presented a claim to the County Commissioners under Section 2997 of the General Code of Ohio for three hundred (\$300.00) dollars, to pay said Special Deputy or to reimburse the Sheriff. The claim was allowed by the County Commissioners

but the County Auditor now refuses to issue his warrant or order to the County Treasurer for payment.

The Auditor admits that there are ample funds under Section 2997 to pay the claim but contends that payment thereof would be illegal except it be paid from the Deputy Fund above referred to which is now exhausted.

The Sheriff claims that the Special Deputy was absolutely necessary and that among other things said deputy assisted in transporting persons accused or convicted of crimes and conveyed persons to and from State Hospitals for the insane, etc.

QUESTION: Is it the duty of the County Auditor to issue his warrant in payment of the three hundred (\$300.00) dollars, to pay the Sheriff or reimburse him for money paid the Deputy as explained above? If your answer should be in the negative what are the rights of the Sheriff and what would be the proper procedure to follow in order to obtain the three hundred (\$300.00) dollars expended for Deputy hire?"

In a subsequent letter you have informed that the Sheriff presented his claim in the amount of Three Hundred (\$300) to the Board of County Commissioners on January 7, 1935, and that said claim was approved on that day by the Board of County Commissioners.

Rather than decide from which fund the claim may be paid it is first necessary to determine if the County Commissioners were authorized to approve the claim as presented by the Sheriff.

Your statement of facts reveal that the County Commissioners, in 1934, appropriated Fifteen Hundred Fifty (\$1550) dollars apparently pursuant to Section 2981, General Code, which authorizes a Sheriff to appoint and employ necessary deputies, fix their compensation, and discharge them. The following sentence is contained in Section 2981, General Code:

"Such compensation shall not exceed in the aggregate for each office the amount fixed by the commissioners for such office."

According to your statement the sum appropriated to the Sheriff under Section 2981, General Code, became exhausted before the end of the year 1934. As a consequence, because of the employment of a special deputy, there were insufficient funds with which to pay the salary of such deputy to the extent of Three Hundred (\$300.00) dollars. The Sheriff's claim for reimbursement was presented and allowed by the County Commissioners January 7, 1935.

By virtue of the provisions of Section 260-1, General Code, the fiscal year of every county shall begin at the opening of the first day of January of each calendar year and end at the close of the succeeding thirty-first day of December.

Section 5625-29, General Code, provides for the annual appropriation measure and such supplemental appropriation measures as may be necessary, based on the revised tax levy and the official certificate of estimated resources or amendments thereof.

Section 5625-30, General Code, reads as follows:

"The total amount of appropriations from each fund shall not exceed the total of the revenue available for expenditure therefrom as certified by the budget commission or in case of appeal by the tax commission of Ohio. No appropriation measure shall become effective until there be filed with the

appropriating authority by the county auditor a certificate that the total appropriations from each fund taken together with all other outstanding appropriations, do not exceed such official estimate, and if amended the last amended official estimate, and in every case in which the appropriation does not exceed such official estimate, the county auditor shall give such certificate forthwith upon receiving from the appropriating authority a certified copy of the appropriation measure. Appropriations shall be made from each fund only for the purposes for which such fund is established."

Section 5625-32, General Code, provides that any appropriation measure may be amended or supplemented from time to time, provided that such amendment or supplement shall comply with all provisions of law relating to an original appropriation.

Section 5625-33, General Code, reads in part as follows:

"No subdivision or taxing unit shall:

(a) Make any appropriation of money except as provided in this act;
* * *.

(b) Make any expenditure of money unless it has been appropriated as provided in this act (G. C. Secs. 5625-1 to 5625-39).

(c) Make any expenditure of money except by a proper warrant drawn against an appropriate fund which shall show upon its face the appropriation in pursuance of which such expenditure is made and the fund against which the warrant is drawn.

(d) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same (or in the case of a continuing contract to be performed in whole or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made), has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances."

In an opinion to be found in Opinions of the Attorney General for 1933, Vol. I, page 790, it was held as disclosed by the second branch of the syllabus:

"In the event no appropriation is made for the payment of the salaries of policemen and firemen in a city operating under general laws, the said policemen and firemen have no claim against the said municipality for their services, although they continue in the service."

This opinion was cited with approval in a subsequent opinion appearing in Opinions of the Attorney General for 1933, Vol. II, page 893. The facts upon which the later opinion was based are so similar to the facts stated in your inquiry that I quote therefrom:

"The amount of money appropriated by the board of county commissioners of a certain county for the employes in the office of the county surveyor, was exhausted on the 15th day of December, 1932. The commissioners, at that time, refused to make any additional appropriation. The employes continued to serve for the last half of December, 1932.

QUESTION: May the county commissioners make an appropriation in the year 1933 for the purpose of paying these employes for the last half of December, 1932?"

In response to that question, after recalling the pertinent provisions of Sections 5625-29, 5625-30, 5625-32, and 5625-33, General Code, cited supra, the opinion said:

"One of the main purposes of the budget act is to compel political subdivisions to live within their income. The appropriations for a year must not exceed the estimated receipts for that year, and all expenditures for that year must be within those appropriations. To allow an appropriation to be made in 1933 for payment of salaries for services rendered in 1932 when there was no appropriation therefor, would, in my opinion, violate both the spirit and letter of this act. To say that obligations can thus be incurred without any appropriations therefor, to be paid by appropriations in subsequent years, would be to permit a political subdivision to create indebtedness for current operating expenses in one year far in excess of its income for that year.

I am of the opinion therefore that county commissioners are not authorized to make an appropriation in 1933 for the purpose of paying the employes of a county surveyor for services rendered in the last half of December, 1932, when there was no appropriation therefore at the time those services were rendered."

Feeling that the conclusions reached in the 1933 opinions quoted supra are correct and that the same are pertinent to your inquiry, it is my opinion that the Board of County Commissioners was unauthorized to make an appropriation in 1935 for the purpose of paying a Deputy Sheriff for services rendered during 1934, when there was no appropriation therefor at the time those services were rendered.

The latter part of your question is:

"If your answer should be in the negative what are the rights of the sheriff and what would be the proper procedure to follow in order to obtain the \$300.00 expended for deputy hire?"

It is quite apparent from the discussion herein that whatever moral obligation there might be on the part of the county to reimburse the Sheriff, the fact is that there exists no legal obligation so to do and no authority by which such reimbursement may be made.

Respectfully,

JOHN W. BRICKER,

Attorney General.