

for a hawk and owl fund. Since the phraseology of the latter section is different from the phraseology of sections 5825 and 5829, the following discussion will have no application to the latter section.

Section 1410 reads as follows:

"A bounty of one dollar shall be allowed and paid in the manner hereafter provided, for every chicken hawk, American goshawk, blue hawk, Cooper hawk, sharp-shinned hawk, duck hawk and great horned owl killed in this state by an inhabitant thereof. Any person applying for such bounty shall take such hawk or owl to the clerk of the township in which such hawk or owl was killed. Such clerk shall issue and deliver to the applicant a certificate stating the bounty to which the applicant is entitled and shall at once destroy all such hawks and owls, but such certificate shall not be issued unless there is a fund in the township treasury out of which such bounty may be paid. Such fund shall be set apart out of the general fund of the township by appropriation therefor by the township trustees, which fund in no year shall exceed the sum of one hundred dollars."

This section specifically provides that such certificate shall not be issued unless there is a fund in the township treasury out of which such bounty may be paid. Whether there is a fund will depend upon the action of the trustees in setting such fund apart.

The terms of the section seem to be mandatory, but it is well within the discretion of the township trustees to determine the amount of such fund. A maximum of \$100.00 is fixed, but there is no minimum stated. Since the trustees by fixing a fund less than enough to pay a single bounty might prevent the payment of any bounty, the first question which you raise is largely academic.

Since statutes providing for the expenditure of public funds must be strictly construed, your second question must be answered in the negative. A certificate issued when no fund exists would not be a valid obligation against the township and would make the official issuing the same liable for such issue.

Respectfully,

C. C. CRABBE,  
*Attorney General.*

2773.

SECTION 9 OF AMENDED SUBSTITUTE SENATE BILL NO. 94 (SECTION 290 G. C.) DOES NOT APPLY TO FINDINGS ALREADY MADE BY THE BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES.

*SYLLABUS:*

*Section 9 of amended substitute senate bill No. 94 does not apply to findings already made by the Bureau of Inspection and Supervision of Public Offices and is not intended to apply to money collected for the state or a subdivision thereof in the hands of magistrates and others authorized to collect and pay the same into the state or other treasury.*

COLUMBUS, OHIO, Sept. 10, 1925.

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

**GENTLEMEN:—**Your request for an opinion reads as follows:

"Section 9 of amended substitute senate bill No. 94 (Mr. Vorys) reads:

"The bureau of inspection and supervision of public offices may require financial reports from any county, political subdivision or taxing district showing the condition of all appropriation accounts, the money actually in the treasury to the credit of each and every fund or account, and such other information as it may deem proper for the enforcement of this act. Upon request of said bureau, the attorney general shall file and prosecute to judgment or decree appropriate actions at law or equity to prevent the unlawful expenditures of public funds, cancel contracts made without compliance with the provisions of law or enforce liabilities arising from false certifications or failure to prepare and furnish financial reports as requested by law, and to enforce generally the provisions of law relating to the expenditure of public funds. All sums collected as a result of such actions shall be placed in the treasury of the appropriate county, political subdivision or taxing districts."

"Question 1: Are all findings of the bureau remaining unpaid at the date this bill became effective to be prosecuted to judgment and decree by your department, or does the above section have reference to findings of the bureau made subsequent to such effective date?"

"Question 2: Does said section have application to findings of the bureau for moneys due a taxing district from collectors of their revenue?"

Section 9 of amended substitute senate bill No. 94 provides additional duties for the bureau. These duties being added are distinct from those required to be performed by the bureau under section 286, et seq., General Code.

It is provided in the above mentioned sections as follows:

- (1) That the bureau of inspection and supervision of public offices may require financial reports which shall show the condition of all accounts and the moneys actually in the treasury to the credit of each said fund or account;
- (2) That upon request of the bureau, the attorney general shall prosecute to judgment or decree actions;
  - (a) To prevent the unlawful expenditure of public funds;
  - (b) To cancel contracts made without compliance to law;
  - (c) To enforce liabilities arising from false certificates or a failure to prepare and furnish financial reports required by law; and
  - (d) To enforce, generally, the provisions of law relating to the expenditure of public funds.

That these provisions relate to expenditures under void and illegal contracts or those expenditures otherwise illegally made and not a finding for recovery, seems evident. It may be true that in certain actions provided for by this section, a judgment for money expended may be recovered; but in that case, such judgment is an incident to the action.

From the wording of the new act, it appears that it applies to those matters of expenditures on contracts and in other cases that are contrary to a strict compliance with the provisions of the act and, as a consequence, are not intended to apply to findings for recovery that have already been made by the bureau. The provisions of the new act are intended to make a finding of recovery unnecessary, by preventing the unlawful expenditure or use of public funds.

Money received by collectors of revenue for the state is not an expenditure, but rather a credit; and the duty to collect it is an incident to the office of the collector.

The collector acts in the capacity of a servant, receives and accounts for the money in an official or fiduciary capacity.

For these reasons, both of your questions are answered in the negative.

Respectfully,

C. C. CRABBE,

*Attorney General.*

2774.

COUNTY SURVEYORS REQUIRED TO GIVE ENTIRE TIME AND ATTENTION TO DUTIES OF OFFICE—NO ADDITIONAL COMPENSATION CAN BE PAID FOR SERVICES PERFORMED UNDER SECTION 6691 G. C.

**SYLLABUS:**

*Section 7181, General Code, provides that county surveyors shall give their entire time and attention to the duties of the office, and provides a salary therefor, based on the mileage, population and tax valuation of the county, and does not provide for any additional compensation for added services.*

*Section 6691, General Code, as amended in house bill No. 1, passed by the 86th general assembly, provides that county commissioners may delegate the duties of county ditch supervisors to the county surveyor, but does not provide any additional compensation to the county surveyor for such services.*

COLUMBUS, OHIO, Sept. 11, 1925.

HON. OTTO J. BOESEL, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent communication as follows:

"The county commissioners of Auglaize county, Ohio, in order to secure a more efficient supervisor of ditches, drains and water courses in the several townships of the county, are about to designate the county surveyor of Auglaize county as the ditch supervisor for all townships in the county in which a ditch, drain or water course, or part thereof, has been located, or may hereafter be located, as authorized by section 6691 of the General Code of Ohio, as amended by our last legislature.

"The question arises whether or not the county surveyor could draw the per diem compensation provided for ditch supervisors under the present ditch laws.

"I would, therefore, be pleased to have you advise me whether this per diem compensation, as fixed by law for ditch supervisors, could be legally drawn by our county surveyor in addition to his fixed compensation as surveyor."

Section 6691, General Code, as amended by the 86th general assembly, house bill No. 1, provides as follows:

"In any township or townships in which a ditch, drain or watercourse or part thereof has been or may hereafter be located and constructed, the