

900.

RED CROSS—COUNTY COMMISSIONERS UNAUTHORIZED TO PAY PUBLIC FUNDS THERETO IN PAYMENT OF SALARY AND EXPENSES OF SECRETARY AND MAINTENANCE OF LOCAL OFFICE THEREOF.

SYLLABUS:

A board of county commissioners has no legal authority under either the general poor relief statutes or the emergency poor relief legislation to pay public funds to a Red Cross society, such funds to be applied toward the payment of the salary and expenses of the secretary and the maintenance of the local Red Cross office.

COLUMBUS, OHIO, May 31, 1933.

HON. JACOB E. DAVIS, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR:—Your recent request for my opinion reads:

“What, if any, authority has the Board of County Commissioners of Pike County, Ohio, to contribute funds to the Pike County Chapter of the National Red Cross Society, to be applied toward the payment of the salary and expenses of the Executive Secretary, and for the maintenance of, the local Red Cross office?”

The local Red Cross Society is in dire need of financial relief and, in fact, must cease to exist unless some manner or means of relief can be found. The Board of Commissioners feel that it would be an economic relief measure to help if such can be legally done.

We will very greatly appreciate your opinion upon this matter.”

Article X, Section 5 of the Ohio Constitution provides that:

“No money shall be drawn from any county or township treasury, except by authority of law.”

It is fundamental that county commissioners have those powers and duties which are fixed by statute or are naturally and necessarily implied from the language of the statutes. *State, ex rel. vs. State Medical Board*, 107 O. S. 20; *State, ex rel. vs. Commissioners*, 8 N. P. (N. S.) 281; *Ireton vs. State, ex rel.* 12 O. C. C. (N. S.) 202; *Peter vs. Parkinson*, 83 O. S. 36. Such rule is very well stated by Matthias, J., in the case of *Elder vs. Smith*, 103 O. S. 369, 370:

“It has long been settled in this state that the board of county commissioners has such powers and jurisdiction, and only such as are conferred by statute.”

The legislature has by legislative action provided for the administration of poor relief. Sections 3476 to 3496, General Code, inclusive. These sections have been supplemented by certain emergency legislation by the enactment of Senate Bills Nos. 3 and 4 of the Special Session of the 89th General Assembly, Amended Senate Bill No. 61, and Senate Bill No. 63 of the 90th General Assembly, effective February 28, 1933. Section 9 of Senate Bill No. 63 of the 90th General Assembly (section 2294-9, General Code) provides for the distribution of the “emergency relief fund,” and reads in part as follows:

“No disbursement of any part of the emergency relief fund shall be made by the county commissioners or the council or other legislative body of any city of any county until the budget of such county or city for relief expenditures has been approved by the state relief commission. At any time after such approval and in accordance therewith and prior

to the first day of March, 1935, the county commissioners of any county shall, from time to time, distribute such portion of said fund to any or all of the cities (whether charter cities or otherwise) and townships of such county, according to their relative needs for poor relief as determined by such county and as set out in such approved budget; such moneys so distributed to any city or township shall be expended for poor relief in such city or township, including the renting of land and the purchase of seeds for gardening for the unemployed, and for no other purpose.

The county commissioners of any county, at any time prior to the first day of March, 1935, upon the request of any board of education other than the county board of education in such county, and upon proof to their satisfaction that such board is without funds available for the relief of school children, may supply such board with funds as approved by the state relief commission in any amount, which funds may be paid out of the emergency relief fund, or from the county poor relief excise fund, and shall be expended by such boards of education for the relief of school children, and for no other purpose.

At any time prior to the first day of March, 1935, the county commissioners of any county may, when authorized by the state relief commission (,) expend any part of the emergency relief fund or the county poor relief excise fund of such county for furnishing work relief and direct relief as defined in this act, to any or all persons in such county who are in a condition requiring it. Anything in sections 3476 to 3496, both inclusive, of the General Code, to the contrary notwithstanding."

There is no authority granted by either the general poor relief laws or the emergency legislation authorizing the county commissioners to contribute public funds to a Red Cross society. There is no question but that the various Red Cross societies throughout the country have been doing noble work in aiding the great task of poor relief. The legislature in its sound discretion has provided for the distribution of public funds for poor relief. The legislature has provided that the public funds available shall be administered primarily by the city authorities and the township trustees, and, under certain circumstances, direct relief can be furnished by the county commissioners. In a recent opinion by this office, Opinion No. 862, rendered under date of May 23, 1933, it was held:

"When there is formed in a county a board known as a county relief board which has as its purpose the investigation and preparation of a list of unemployed persons within a county and the furnishing of such list to contractors on public, state or county projects, the board of county commissioners of such county has no authority to pay the expenses of such board and no authority to compensate the members and employes of such board from public funds, for their time and efforts in such service."

The county commissioners, by virtue of section 9, Senate Bill No. 63 of the 90th General Assembly (section 2294-9, General Code) quoted above, are authorized upon the approval of the state relief commission to expend part of the emergency relief fund or the county poor relief excise fund of such county for furnishing work relief and direct relief to persons in such county. If upon the

approval of the state relief commission the county commissioners decide to furnish the direct relief and it is necessary before granting such relief to make investigations, the county commissioners would have the implied authority to employ the necessary persons to make the investigations. The commissioners would have no authority to pay a private society for making such investigations.

In specific answer to your inquiry, it is my opinion that a board of county commissioners has no legal authority under either the general poor relief statutes or the emergency poor relief legislation to pay public funds to a Red Cross society, such funds to be applied toward the payment of the salary and expenses of the secretary and the maintenance of the local Red Cross office.

Respectfully,

JOHN W. BRICKER,
Attorney General.

901.

APPROVAL, PETITION TO AMEND SECTION 2750 OF THE GENERAL CODE.

COLUMBUS, OHIO, May 31, 1933.

HON. ED. D. SCHORR, *Chairman, Republican State Central Committee, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination a written petition signed by one hundred qualified electors of this state, containing a measure to be referred and a summary of the same, under Section 4785-175, General Code.

It is proposed to refer to the electors of this state House Bill No. 331 of the 90th General Assembly, entitled "An act to amend section 2750 of the General Code, relative to the term of office of the county recorder and to adjust existing terms in accordance with such amendment."

The summary of this measure to be referred reads as follows:

"The present law of Ohio provides that at each general election in even numbered years the people in each county shall elect a county recorder for a term of two years. House Bill No. 331, passed by the 90th General Assembly, repeals that law and extends to January, 1937, the terms of present county recorders elected in 1932 for a term of two years. Said House Bill No. 331 also provides that at the general election in 1936, and quadrennially thereafter, county recorders shall be elected for four year terms."

I am of the opinion that the foregoing is a fair and truthful statement of the measure to be referred and accordingly submit for uses provided by law the following certification:

"I, John W. Bricker, Attorney General of the State of Ohio, pursuant to the duties imposed upon me under the provisions of Section 4785-175, General Code, hereby certify that the foregoing summary is a fair and truthful statement of House Bill No. 331 of the 90th General Assembly. JOHN W. BRICKER, Attorney General."

Respectfully,

JOHN W. BRICKER,
Attorney General.