

"If the board of education in a district under the supervision of the county board of education fails to provide sufficient school privileges for all the youth of school age in the district, or \* \* to elect a superintendent or teachers, \* \* the county board of education of the county to which such district belongs, upon being advised and satisfied thereof, shall perform any and all such duties or acts, in the same manner as the board of education by this title is authorized to perform them. \* \*"

The Supreme Court in the case of *State ex rel. vs. Beamer*, 109 O. S., 133, at page 139, said, with reference to the above provision of the statute:

"Under Section 7610-1, General Code, the duty of the county board of education is measured by the duty of the board of education in the district."

There is no provision of law authorizing the clerk of a board of education, as such clerk, to vote under any circumstances on any proposition before the board.

I am therefore of the opinion, in specific answer to your question, that the tie vote spoken of by you may not be broken by the clerk. If the members of this board persist in their course of action and fail to employ a teacher for the school in question before the time, or approximately the time for school to open, it becomes the duty of the county board of education by virtue of Section 7601-1, General Code, to employ a teacher for the school in question.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

4629.

VILLAGE SOLICITOR—COUNTY COMMISSIONERS MAY NOT PAY ANY PART OF COMPENSATION OF LEGAL COUNSEL FOR VILLAGE.

*SYLLABUS:*

*A board of county commissioners may not make an allowance for the compensation in whole or in part of legal counsel provided for a village by a village council under authority of section 4220, General Code.*

COLUMBUS, OHIO, September 20, 1932.

HON. LUCIAN YOUNG, *Prosecuting Attorney, Caldwell, Ohio.*

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

"Will you kindly inform me of your opinion as to the following questions:

1. Under section 4307 as interpreted in 93 O. S. 42, are county commissioners required to make an allowance for legal counsel employed by a village under section 4220?

2. May they make such an allowance if they desire to so do?"

Section 4307, General Code, relative to solicitors of cities, reads:

"The prosecuting attorney of the police or mayor's court shall prosecute all cases brought before such court, and perform the same duties, as far as they are applicable thereto, as required of the prosecuting attorney of the county. The city solicitor or the assistant or assistants whom he may designate to act as prosecuting attorney or attorneys of the police or mayor's court shall receive for this service such compensation as council may prescribe, and such additional compensation as the county commissioners shall allow."

Section 4220, General Code, relative to the appointment of legal counsel for villages and the payment of compensation therefor, provides as follows:

"When it deems it necessary, the village council may provide legal counsel for the village or any department or official thereof, for a period not to exceed two years, and provide compensation therefor."

The case of *Board of Commissioners of Butler County vs. Primmer, et al.*, 93 O. S. 42, concerns the right of a city solicitor to receive compensation from a county, and the question of the power of a counsel of a village to receive compensation was not considered therein.

It should also be noted that section 4307, General Code, specifically authorizes the county commissioners to allow, if they deem it advisable, additional compensation to the person designated as prosecuting attorney or as assistant or assistants of the police or mayor's court. No such provision is made as to the compensation of legal counsel employed under the authority of section 4220, General Code.

Article X, section 5, of the Ohio Constitution, which is pertinent to your inquiry, provides:

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

See also *Clark vs. Commissioners*, 58 O. S. 107.

An examination of section 4220, General Code, discloses no provision which would authorize a board of county commissioners to make an allowance for legal counsel employed by a village by virtue of such section.

In view of the above constitutional provision and the fact that there exists no statute which authorizes a board of county commissioners to compensate legal counsel provided by a village council under section 4220, General Code, even if the board so desire, I am of the opinion that a board of county commissioners may not make an allowance for the compensation in whole or in part of legal counsel provided for a village by a village council under the authority of section 4220, General Code.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*