

Company, authorizing said The Ohio Service Company to enter in and upon said lands and premises and to erect thereon certain towers, poles and lines for the purpose of transmitting electric power and for the purpose of installing thereon telegraph and telephone lines. There has been no change in the matters referred to in said exceptions.

I am advised that your committee is of the view that the construction and installation of the towers, poles and wires contemplated by these easements will not interfere with the purpose for which this property is being purchased by your committee, and that it is your intention to purchase said lands and premises subject to said easements.

I have examined the Warranty Deed executed by said Otis P. Morris and Noramanda Morris, his wife, conveying said premises to the State of Ohio. Said Warranty Deed is properly executed, contains an accurate description of the lands to be conveyed, and is in proper form to convey a fee simple title to said premises to the State of Ohio, the grantee therein named, subject to the easement of The Ohio Service Company above referred to.

There has been presented to me a satisfactory certificate showing that the purchase of said lands and premises has been approved by the Controlling Board.

The encumbrance estimate with respect to the purchase of said property has likewise been examined and the same shows that there are unexpended balances in the appropriation account sufficient to pay the purchase price of said property.

Assuming that it is satisfactory to your committee, as before noted, to purchase said lands, subject to the right of The Ohio Service Company to erect the towers, poles and wires provided for in the license or easement given to it by said Otis P. Morris, the purchase of said lands and premises and the proceedings relating thereto are hereby approved.

I am herewith transmitting to you said abstract of title, warranty deed, appropriation account, encumbrance estimate and certificate of the action of the Controlling Board above referred to.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1799.

COMMON PLEAS COURT—JURY AND WITNESS FEES—SECTION 5625-33,
GENERAL CODE, DISCUSSED.

SYLLABUS:

1. *A Common Pleas Judge is without authority to incur obligations on behalf of the county without complying with the terms of Section 5625-33, General Code.*

2. *Jury fees and witness fees, for which a county is liable, can be paid only from appropriations made for that purpose.*

COLUMBUS, OHIO, March 3, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your communication as follows:

“We respectfully request your written opinion on the following matter submitted by one of our State Examiners:

"The Judge of the Common Pleas Court in a certain county of this state insists that he is a state officer and does not come within the provisions of Section 5625-33, G. C., formerly 5660, G. C., and comes within the rule announced by the Attorney General in his 1926 reports, holding that said section did not apply to state officers.

Question 1. Has such judge authority to contract or incur obligations without such certificate?

Question 2. Has the clerk of courts or the judge authority to incur obligations above the amount appropriated for jury and witness fees to be paid from the county treasury? It might be well to note that the Federal Court had to curtail its activities in 1927, because of a lack of appropriation by Congress, and we wish to know whether the same rule applies to state courts under the state law?"

Section 5625-33, General Code, referred to in your letter, was enacted by the 87th General Assembly as a part of House Bill No. 80, which bill was entitled: "An Act—Providing for the levying of taxes by local subdivisions and their method of budget procedure, and repealing Sections 2034 * * * 5660 * * * of the General Code." Section 1 of this act, codified as Section 5625-1, General Code, reads in part, as follows:

"Section 1. The following definitions shall be applied to the terms used in this act:

(a) 'Subdivision' shall mean any county, school district, except the county school district, municipal corporation or township in the state.

(b) * * *

(c) * * *

(d) * * *

(e) * * *

(f) * * *

(g) * * *

(h) * * *

(i) 'Taxing unit' shall mean any subdivision or other governmental district having authority to levy taxes on the property in such district or issue bonds which constitute a charge against the property of such district including Conservancy Districts, Metropolitan Park Districts, Sanitary Districts, Road Districts and other districts.

(j) * * *

(k) * * *"

Section 33 of the act, codified as Section 5625-33, reads in part, as follows:

"Section 33. 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.

(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. Every such contract made without such a certificate shall be void and no warrant shall be issued in payment of any amount due thereon. * * *

The Constitution of Ohio in Article X, Sec. 5, provides :

“No money shall be drawn from any county or township treasury except as provided by law.”

From the fact that the title of the act of which Section 5625-33, General Code, is a part, states that the purpose of the act is to provide for the levying of taxes and the method of budget procedure by *local subdivisions* and the further fact that the definitions of “subdivision” and “taxing units,” as set forth in Section 5625-1, *supra*, clearly show that these terms include only local subdivisions of the state and not the state itself, it follows that Section 5625-33, General Code, wherein certain restrictions are placed on the manner of the expenditure of public funds by “subdivisions” and “taxing units,” does not apply to the state, but only to “subdivisions” and “taxing units” which are local subdivisions of the state.

It will be observed that Section 5625-33, *supra*, makes no mention whatever of contracts made or obligations incurred by any public officer or class of officers. The language of the section is strictly confined to appropriations and expenditures of money made by a “subdivision” or “taxing unit.”

It provides as to these local subdivisions that no appropriations shall be made except as provided by the act, and no expenditures of money made unless it be appropriated, and then only by proper warrant drawn against the appropriate fund, which warrant shall not be issued unless the contract or order involving the expenditure be accompanied by a certificate of the proper fiscal officer that the amount required to meet the expenditure 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.

Of course the only way a “subdivision” or “taxing unit” may make expenditures or incur obligations is by the action of some officer or person authorized by law to act for them in the making of contracts and the giving of orders involving the expenditure of money.

It seems clear, however, upon consideration of the constitutional provisions above quoted, to the effect that no money may be drawn from a county treasury except by authority of law, together with Section 5625-33, *supra*, that no action of any person or officer, although he be clothed with power to incur obligations against the county, would succeed in making an effective contract or incur an obligation which might be paid from the county treasury unless the law, as contained in Section 5625-33, *supra*, be followed.

Judges of courts of Common Pleas, as well as the various county officers and employes, are authorized by law to give orders which involve the expenditure of money by the county, but no such contracts will be valid, nor is the fiscal officer of the county authorized to draw his warrant in payment of any such obligations, unless the terms of Section 5625-33, General Code, are complied with.

While a portion of Common Pleas Judges' salary is paid from the state treasury, I know of no provision of law which authorizes such judges to incur obligations on behalf of the State.

They do, by making certain appointments and authorizing certain expenditures, such for example as the cost of impaneling special grand juries and the making of allowances to prosecuting attorneys, create obligations which must be met from the county treasury, but these obligations cannot be paid except as provided by Section 5625-33, supra. Jury fees and witness fees in criminal cases are paid from the county treasury and therefore can only be paid from proper appropriations.

It does not follow from this, however, that courts must necessarily suspend, even though no money has been appropriated or is available for appropriation for the purpose of paying the fees of necessary witnesses and jurors.

Compensation for witnesses and jurors is purely a matter of statute. If the statute does not provide for compensation, witnesses and jurors might be required to serve without compensation. This rule is stated in R. C. L., Vol. 28, page 652, as follows:

“Undoubtedly, the administration of justice being a source of mutual benefit to all the members of a community, each is under obligation to aid in furthering it as a matter of public duty, and every competent citizen may be summoned by due process of law to appear and render personal services in court without right on his part to a special compensation for so doing. His time is claimed by the public as a tax paid by him to that system of law which protects his rights as well as those of others. * * * The state is not required to advance fees to a witness whom it has summoned and who makes a demand therefor. * * *”

Our statutes do provide for paying witnesses and jurors. If they serve they have a lawful claim for such fees as are provided for by the statutes but they cannot be paid until the money is appropriated as provided by law. Claims for witness and jury fees are not based on contract but are payable by virtue of statutory law. In *Corpus Juris*, Vol. 15, page 900, it is said:

“Courts have inherent power to incur and order paid all expenses necessary for the holding of court and the discharge of the duties thereof. In the absence of some statutory provisions in reference thereto, it is for the court alone to determine what expenditures are necessary to carry on the business of the court, but if there is a statute with reference thereto the power of the court is controlled thereby.”

In Ohio the court's power to determine what expenditures are necessary is controlled to the extent of the constitutional provision that no money shall be expended from a county treasury except as provided by law. Article X, Sec. 5, supra. The law provides in Section 5625-33, supra, that appropriations must be made and that no contract for the expenditure of money may be entered into or obligation incurred until the money therefor is appropriated and a certificate of the fiscal officer is made to the effect that the money to meet the obligation has been appropriated, is in the treasury and is unencumbered. This, however, has no application to the creation of obligations for witness and jury fees which is fixed by statute. The making of these appropriations so far as a county is concerned is solely in the hands of the county commissioners. County commissioners, however, cannot abuse the control they have over appropriations by refusing to provide for the necessary expenditures of the court but neither may the court disregard the authority vested in the county commissioners.

In this connection I would direct your attention to Opinion No. 76 rendered February 12, 1927, addressed to the Hon. H. J. Seymour, Prosecuting Attorney of Portage County, a copy of which is enclosed herewith. This opinion dealt with the

power of the court to fix allowances for the use of the prosecuting attorney under and by virtue of Section 3004-1, General Code, and held:

“The court in fixing an allowance under Section 3004-1 of the General Code must look to the appropriation made by the county commissioners for that purpose. If the court makes an allowance in excess of the amount appropriated and the county commissioners do not within the fiscal year amend their appropriation measure so as to include the amount of such allowance, then although such allowance is not illegal, it is ineffective.”

Specifically answering your questions in the order asked, I am of the opinion that:

1. A Common Pleas Judge has no more authority than other officers to incur obligations on behalf of the county, without complying with the terms of Section 5625-33, General Code.

2. Jury fees and witness fees for which a county is liable can be paid only from appropriations made for that purpose.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1800.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE W. H. SPOHN PLUMBING COMPANY, COLUMBUS, OHIO, FOR THE CONSTRUCTION OF HEATING AND PLUMBING ITEM (20) FOR NEW CHEMISTRY BUILDING, OHIO STATE UNIVERSITY, COLUMBUS, OHIO, AT AN EXPENDITURE OF \$37,700.00—SURETY BOND EXECUTED BY THE GLOBE INDEMNITY COMPANY OF NEW YORK.

COLUMBUS, OHIO, March 3, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for and on behalf of the Board of Trustees of the Ohio State University, and The W. H. Spohn Plumbing Company, of Columbus, Ohio. This contract covers the construction and completion of heating and plumbing (Item 20) “Complete New Chemistry Building” on the University campus, Ohio State University, Columbus, Ohio, and calls for an expenditure of thirty-seven thousand, seven hundred dollars (\$37,700.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted a certificate from the Controlling Board, signed by the secretary thereof, that in accordance with Section 12 of House Bill No. 502, 87th General Assembly, said board has properly consented to and approved the expenditure of the monies appropriated by the 87th General Assembly for the purpose covered by this contract. In addition, you have submitted a contract bond upon which the Globe Indemnity Company of New York appears as surety, sufficient to cover the amount of the contract.