

Rule 2 adopted by the trustees of the firemen's pension fund of the city of Lancaster reads:

'Any member of the Lancaster fire department who, having performed faithful service therein for a period of not less than twelve and one-half years actual service, shall become permanently disabled from performing the duties of a fireman by reason of sickness or disease caused by such service, unless the same be of a hereditary nature or the result of vicious habits, and who shall have been removed from active duty in such department for the above cause, shall, when such disability has been determined by examination by a medical officer ordered by the trustees of the firemen's pension fund, be entitled to have his name placed by the said board of trustees of the firemen's pension fund upon the pension roll, and he shall receive a monthly pension as follows:

- (a) If such disability be partially permanent, a sum to be determined by said board of not less than \$1.00 nor more than \$50.00.
- (b) If such disability be totally permanent, a sum of \$60.00.'

Several members of the fire department who are eligible to pensions have been examined by local physicians at the request of the board of trustees and bills for such services have been presented.

Question: May medical fees for this purpose be paid from the funds under the control of the firemen's pension fund trustees?"

It would seem that Rule 2, to which you refer, was adopted in pursuance to the statutory authority of Section 4612, which you quote in your letter.

The only question, therefore, presented is whether or not a local physician making an examination at the request of the board of trustees is the equivalent of "examination by a medical officer ordered by the trustees," as provided in the rule. No doubt under the rule the trustees could appoint a physician as an officer and he could be compensated out of the fund. Certainly such an examination is essential in order to properly protect such funds, and such an expense would be a proper one to be borne by the fund.

The practice adopted in the inquiry presented would not seem to be in conflict with the authority of the rule, and would seem to be a substantial compliance therewith, and it is my opinion that such bills may properly be paid from such fund.

Respectfully,

C. C. CRABBE,  
*Attorney-General.*

3716.

**COSTS OF OPERATION OF STATE FAIR SHALL BE PAID FROM FUND APPROPRIATED BY THE LEGISLATURE.**

**SYLLABUS:**

*It is the intent of the law that the total expenditure and costs of the operation of the State Fair shall be paid from the fund appropriated by the legislature, and that all receipts from such operation shall be paid into the state treasury to the credit of the agricultural division of the general revenue fund.*

COLUMBUS, OHIO, October 16, 1926.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—In a recent communication Hon. Harry D. Silver, Deputy Auditor, requests my opinion on the following:

“By virtue of a careful audit of the Division of State Fair, in the Department of Agriculture, in addition to the items charged by said Department against their appropriation, we find the following:

Contract for fireworks whereby the Department of Agriculture agrees to pay percentages of the grand stand receipts amounting to-	\$ 9,109 35
Auto races to the amount of .....	2,758 62
Deductions made from premium accounts to cover bills payable to the Department to the amount .....	1,275 25
Contract whereby the Auto Show Association were to pay for State Fair advertising to amount of .....	1,250 00
The amount due from said association for rental of exhibition building for winter auto show.	
O. S. U. Athletic Association contributed to amount of .....	1,000 00
As rental fee for coliseum by way of advertising for State Fair.	

The aggregate of said items total .....

\$15,393 22

It is the desire of this Department to be officially advised by the Attorney-General as to whether or not these are legal charges against the State Fair appropriation of \$200,000 for uses and purposes of the State Fair, as made under House Bill 517.”

Section 1094 provides:

“The board of agriculture shall hold an annual exhibit of the agricultural and general productive industries of the state, and may make rules for the payment of premiums to exhibitors. The state agricultural fund shall be at the disposal of the board of agriculture for the improvement of the agricultural interests of the state. All moneys derived from the provisions of this act shall be paid to the board of agriculture and by it paid into the state treasury upon the draft of the auditor of state and credited to the agricultural division of the general revenue fund. When escheated property is legally reclaimed by an heir, the state agricultural fund shall be held subject to the payment to the purchaser from the state of so much of the original purchase money as it receives with legal interest to the time of reclamation. The board of agriculture shall have the custody of the land, buildings, and other property at the state fair grounds at Columbus, and shall use the same for agricultural purposes and may permit the use of the same to persons, firms, associations, or corporations for such exposition purposes and under such conditions as the board of agriculture may from time to time prescribe.”

From the above it will be noted that the Board of Agriculture is required to hold annual exhibits of the agricultural and general productive industries of the state, and all moneys derived from the provisions of the act relating thereto shall be paid to the Board of Agriculture and by it paid into the state treasury and credited to the agricultural division of the general revenue fund. It will further be observed that the board, under the provisions of the section above quoted, shall have the custody of the

land, buildings and other property at the state fair grounds and use the same for agricultural purposes, and may permit the use of same to persons, firms, associations or corporations for exhibition purposes under such conditions as the board prescribes.

The duties and powers of the State Board of Agriculture, as set forth in this section, were transferred to the Department of Agriculture under the provisions of section 154-42 of the General Code as enacted in 109 Ohio Laws, which act abolished the State Board of Agriculture as it existed prior to said enactment. It will be seen, therefore, that whatever duties the State Board of Agriculture had under the provisions of said section in reference to managing and conducting fairs are now vested in the Department of Agriculture. Also any duties which said section imposed upon the State Board of Agriculture are likewise imposed upon the Department of Agriculture.

The General Appropriation Bill (H. B. 517), of the 86th General Assembly, under the caption "Department of Agriculture", among other things, provided:

	First Year.	Second Year.
"Uses and Purposes State Fair (to be budgeted with the advice and approval of the State Board of Agriculture).....	\$200,000	\$210,000"

Section 1094, above referred to, would seem to specifically require any money derived in the management or conducting of the state fair to be turned into the state treasury. While the department has considerable discretion in reference to the conducting of the state fair, in arranging for displays and attractions, it is believed that it may not make such arrangements as to deprive the state treasury of its legitimate funds.

Section 22 of Article II of the Ohio Constitution provides:

"No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; \* \* \*"

and it follows, therefore, that the Department of Agriculture may not spend funds in excess of its appropriation, as set forth in the appropriation bill. Any manipulation of contracts whereby moneys or the equivalent of moneys are allowed to the Department of Agriculture for the conducting of fairs in excess of the appropriation made by the legislature cannot be successfully defended from a legal standpoint, however attractive it may be otherwise. Of course, there is no objection to a contract whereby a percentage of the receipts may be turned into the state treasury, but such receipts go into the general revenue fund and are not available for the use of the department without a specific appropriation.

What is true with cash receipts would likewise be true of any other arrangement whereby a value is received by the Department of Agriculture in connection with its fair operations. If it receives a thing of value for which it would be required to expend funds, were it not for an arrangement such as you refer to, this would properly be charged against the appropriation. In other words, it is the intent of the law that the Department of Agriculture shall turn into the general revenue fund all receipts derived from the operation of the fair.

It further requires that contracts be made in such manner so as to credit the state for services and rights granted by the state. It is further the clear intent that the entire cost of said state fair shall be expended from the amount appropriated.

In view of the foregoing, it is believed that the items to which you refer are deductible from the sum set forth in the appropriation bill. In reaching this conclusion section 1107 G. C. has not been overlooked. However, it is not believed this section

alters the situation, as it simply authorizes the Treasurer of State and Auditor of State to arrange for expenditures and making changes during the progress of the fair, and all of such transactions are to be included within the regular appropriation made for the purpose of operating the fair.

Respectfully,  
C. C. CRABBE,  
*Attorney-General.*

3717.

OFFICES COMPATIBLE—DEPUTY CLERK OF COURTS MAY ACT AS  
STENOGRAPHER TO PROSECUTING ATTORNEY.

*SYLLABUS:*

*A deputy clerk of courts may act as stenographer to the prosecuting attorney when the same can be done without in some degree neglecting the duties of the other position.*

COLUMBUS, OHIO, October 16, 1926.

HON. H. O. MCGONAGLE, *Prosecuting Attorney, McConnelville, Ohio.*

DEAR SIR:—I am in receipt of your communication as follows:

"In this county it is difficult to obtain persons with suitable qualifications to act as stenographer and clerks in the various county offices, especially is this true in obtaining stenographers because of the fact that the allowances made in this little county are so small that competent persons will not accept employment or appointment at the salaries allowed except in cases where such person is otherwise obliged to reside here. In my own case I have been without a stenographer since last April until the 20th day of September when I appointed one under the allowance made by the court at the beginning of the year, and she is appointed at the salary of \$75.00 from now until the first of the year.

In the case of the Clerk of Courts his year's allowance for deputy hire which was small is consumed except about \$75.00, he has been without a deputy for some time and is much in need of the services of a clerk who can make record on the typewriter, but of course is unable to find anyone who will give their time to his office for the allowance paid. The stenographer in my office will have sufficient time to do this extra work for the clerk of courts, the two offices being close together and in same building, her performing both duties would in no way lessen her effectiveness in either positions. The question is therefore:

May the same person who is now duly appointed as stenographer in the prosecuting attorney's office accept appointment as deputy clerk until the first of the year, or longer, and receive the small compensation as such from both offices?

One may readily see that situated as we are, it is a saving to the county and at the same time will give one person a better salary, this arrangement is very much desired by both clerk and myself if he may legally pay such salary as above explained. Under the provisions of Section 2871 G. C. I find no provisions for the appointment by the clerk of other than a deputy and I am doubtful about the provision of Section 2981 G. C. changing that construction. However, the only question as it appears to me is whether or not the same person may hold both positions and legally draw the allowance therefor. Your opinion of the matter will be very much appreciated."