Your attention is directed to the increased amount which a board of county commissioners may appropriate out of the dog and kennel fund for the purpose of defraying the necessary expenses of registering, seizing, impounding and destroying dogs.

Section 5652-13, now reads as follows:

> "The registration fees provided for in this act shall constitute a special fund known as the dog and kennel fund which shall be deposited by the county auditor in the county treasury daily as collected and be used for the purpose of defraying the cost of furnishing all blanks, records, tags, nets and other equipment, also paying the compensation of county dog wardens, deputies, pound keeper and other employees necessary to carry out and enforce the provisions of the laws relating to the registration of dogs, and for the payment of animal claims as provided in Sections 5840 to 5849, both inclusive, of the General Code. Provided, however, that the county commissioners by resolution shall appropriate sufficient funds out of the dog and kennel fund, said funds so appropriated not to exceed 50% of the gross receipts of said dog and kennel fund in any calendar year, not more than three-tenths of which shall be expended by the county auditor for registration tags, blanks, records and clerk hire for the purpose of defraying the necessary expenses of registering, seizing, impounding and destroying dogs in accordance with the provisions of Section 5652 and, supplemental sections of the General Code."

This section became effective August 10, 1927, and provides what per cent of such fund may be appropriated for the several uses for which such fund is constituted.

Answering your question specifically it is my opinion that a board of county commissioners has authority to provide by appropriation from the dog and kennel fund collected prior to August 10, 1927, the effective date of H. B. No. 164 (112 O. L. 347), for the purpose of compensating a county dog warden or deputies. The amount of money which such board may lawfully appropriate for such purpose is a matter within its discretion; but in no event may such board appropriate more than fifty per cent of the gross receipts of such fund, not more than three-tenths of which amount so appropriated may be expended by the county auditor for registration tags, blanks, records and clerk hire.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1221.

COUNTY TREASURER—BURGLARY INSURANCE—FORMER OPINIONS NUMBERS 527 AND 555 CONSIDERED AND APPROVED.

SYLLABUS:

Opinions Nos. 527 and 555 considered and approved.

COLUMBUS, OHIO, October 31, 1927.

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

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

> "Referring to your Opinion No. 527, rendered under date of May 24, 1927, in which you hold that county commissioners may not legally pay for burg-

lary or hold-up insurance for the county treasurer or for any other county officer, our attention has just been called to a decision of the Court of Appeals of Clark County, a copy of which we are enclosing herewith. This decision seems to be in conflict with your opinion with respect to burglary and hold-up insurance. Will you please advise this department whether in the light of this decision any change should be made in your opinion?"

In Opinion No. 527, rendered by this department under date of May 4, 1927, and addressed to your Bureau, it was held:

"County commissioners have no authority to purchase and pay for burglary or hold-up insurance for the county treasurer or for any other county officer, nor have they authority to pay for insurance against forgery for the county treasurer."

This opinion is contrary to the decision of the Court of Appeals in the case of *Funderburg, et al.* vs. *James S. Webb*, rendered by the Court of Appeals of Clark County on September 19, 1924, a copy of which opinion you enclosed, in so far as such opinion upheld the power and authority of a board of county commissioners to purchase and pay for burglary or hold-up insurance covering monies, securities and public funds in the hands of county officers. The decision of this case had not come to my attention for the reason that the opinion has never been published in any official publication of reported decisions of the court. It appears that this was a suit brought in the common pleas court of Clark County by James S. Webb, against the County Commissioners of Clark County, Frank E. Funderburg, et al., to recover certain insurance premiums.

There were three causes of action set up in the petition. The first cause of action sought to recover from the county commissioners certain insurance premiums which had accrued on a policy of insurance issued against loss by burglary or fire of monies securities, merchandise, etc., described in a certain schedule, which schedule related to the office of county clerk as well as other offices in the public buildings belonging to the county. The second cause of action related to a policy of liability insurance for damages to and by, automobiles owned by the county, and the third cause of action related to insurance against losses by robbery or other similar means, of property in the custody of agents for the county outside of the premises belonging to the county.

To each of these causes of action a general demurrer was filed. These demurrers were overruled, and final judgment rendered for the plaintiff in all three causes of action, for the full amount claimed.

Upon error to the court of appeals that court sustained the lower court as to the first and third causes of action, and reversed it as to the second cause of action.

In the *per curiam* opinion of the court of appeals, all that is said with reference to the first and third causes of action is contained in four lines, as follows:

"Upon careful consideration of the brief we are of the opinion that the judgment of the court below should be sustained as to the first and third causes of action for the reasons assigned by Judge Krapp in his written opinion."

I have secured a copy of the Opinion of Judge Krapp in this case, rendered by him, April 26, 1924. I quote below the pertinent parts of this opinion, which relate to the first and third causes of action set up in the petition.

"The question for consideration in this case is whether the county commissioners have authority to contract for the class of insurance mentioned

in the petition, which is, principally burglary, robbery and automobile indemnity.

It is quite clear there is no such authority conferred by statute, and if the power exists at all it must do so under the general provisions which clothe the county commissioners with inherent authority to perform acts to preserve or to benefit the corporate property of the county over which they have control.

It is urged that the clerk of the courts, being under bond and responsible for all monies in his custody, the county could in no event lose, in case a burglary or robbery was committed. It is true that the clerk, or his bondsmen, would have to make good any loss occasioned in this way, even tho entirely blameless, but there might very well be occasions when the money paid into court could not be repaid by the clerk, altho justly owing. Should a loss occur in funds in the hands of the clerk, any paid in by him must first be distributed to litigants entitled thereto and if any deficiency should occur, the county would lose its share in the amount owing to it.

In addition to this, the public confidence is shocked at the idea of compelling a clerk, who is wholly without fault, to make good any loss sustained through burglary, and if such an event should occur, the county, through a special act of the legislature, has the right to refund such payment to the clerk. Such procedure has occurred in this state in similar cases. The result would be that the entire loss would be borne by the county, and the county commissioners are exercising sound business judgment by insuring the county against the possibility of such a loss.

In addition, the burglary insurance insures the county against loss or damage to the safe and furniture and fixtures in the office, injured by the burglars. That portion of the insurance would be in the same class as fire insurance."

It will be observed from the above opinion that the court recognized the fact that there is no express authority for a board of county commissioners to pay for burglary or robbery insurance such as it had contracted for in that case, and says

> "If the power exists at all it must do so under the general provisions which clothe the county commissioners with inherent authority to perform acts to preserve, or to benefit the corporate property of the county over which they have control."

The court then proceeds to overrule defendant's demurrer, holding that the board of commissioners does have authority to provide for the preservation of the monies in the custody of county officers by insurance against loss by robbery or burglary.

Even though boards of county commissioners are creatures of statute, and as such, have only such powers as are expressly granted to them, they must necessarily have authority whether it be called implied or inherent, to do all things which must necessarily be done, in order to accomplish that which they are expressly authorized and directed to do. That is to say, each specific detail of the carrying out of an express purpose need not be expressly stated before the board may exercise its authority with respect to such detail, but an express authority to do an act carries with it the authority to do the necessary incidental acts to accomplish the purpose for which the express authority was given as fully as though each such incidental detail were expressly authorized in separate and distinct terms. This is often improperly called implied or inherent authority. In reality, *it is that which is included in an express authority.* County commissioners as such have no implied or inherent authority whatsoever.

The supreme court has so clearly and positively stated the rule in the case of *State ex rel., Locher, Prosecuting Attorney,* vs. *Menning,* 95 O. S. 97, that in later cases it has been content to dismiss the question with a reference to its former opinion in the Menning case. In that opinion it was stated:

> "The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county."

The authority given to county commissioners with reference to the county property used by the several county offices is contained in Section 2419, General Code, which reads as follows:

> "A court house, jail, public comfort station, offices for county officers and an infirmary shall be provided by the commissioners when in their judgment they or any of them are needed. Such buildings and offices shall be of such style, dimensions and expense as the commissioners determine. They shall also provide all the equipment, stationery and postage, as the county commissioners may deem necessary for the proper and convenient conduct of such offices, and such facilities as will result in expeditious and economical administration of the said county offices. They shall provide all room, fire and burglar proof vaults and safes and other means of security in the office of the county treasurer, necessary for the protection of public moneys and property therein."

In a former opinion rendered by this department, being No. 555, addressed to your Bureau, it was held that the words "other means of security," as used in the above section, meant such physical means of security as are similar to fire-proof and burglar-proof vaults and safes.

Cognate sections of the General Code direct the county commissioners to furnish, at the expense of the county, necessary books, stationery and similar supplies as may be needed for the county offices. This express authority to provide office equipment and supplies necessarily includes within it the authority to protect and preserve this *physical property* by insurance or otherwise, whether that insurance be against losses by fire, theft, robbery or burglary. The same rule would apply to other county property which it is the duty of the county commissioners to provide and care for.

At no place in the statute will there be found any provision granting to the county commissioners, custody of the monies of the county. The legislature has provided, in furtherance of the constitutional provision contained in Article X, Section 5 of the Constitution of Ohio, that no money shall be drawn from any county or township treasury except by authority of law, that no money shall be paid from the county treasury except it first be appropriated, and have designated the commissioners to be the appropriating authority. In many instances the commissioners are vested with discretionary powers in determining the amounts of money to be used for certain purposes, and when and how payments from the county treasury shall be made, but the actual custody of the county funds, and the responsibility for the care of such funds, and the accounting for the same are in the several county officers charged with the duty of receivin such moneys.

The commissioners are directed to designate depositories for the county funds and the legislature has expressly fixed the manner of securing the funds deposited in

the designated depositories, by providing that security shall be taken therefor, and has expressly provided the kind of securities which the depositories must give. Likewise, the legislature has provided for the securing of funds in the custody of the several county officers, which are not in the county depositories by requiring such officers to give bond therefor.

In each instance the commissioners are charged with the duty of determining the sufficiency of the security covered by the bond.

The legislature itself, by providing for the giving of bonds by the several county officers, and the giving of bonds or the deposit of securities by county depositories, has fixed the manner by which the county shall be secured with reference to its monies and has not authorized the commissioners or any other officials to provide any other or additional means of security for said funds. The commissioners are merely ministerial agents in carrying out the will of the legislature in this respect, except in so far as they are authorized to exercise their judgment in passing on the sufficiency of the bonds tendered.

In the light of the foregoing discussion, and that contained in my former opinion Nos. 527 and 555 supra, and the authorities therein cited, I am unable to agree with the decision of the Funderburg case, supra, in so far as it upholds the authority of county commissioners to expend county funds for the purpose of purchasing insurance against the loss of public funds in the hands of county officers by robbery or burglary.

The decision of Judge Krapp, in so far as the same was affirmed by the Court of Appeals of the second judicial district, is the law of that district, however, and administrative officers in said district are entirely justified in following the rule laid down by the Court of Appeals unless, and until, said rule be reversed by a court of equal, or superior authority.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1222.

DEPOSITORY BOND—MAY BE GIVEN BY BANK AS SECURITY FOR FUNDS OF BOARD OF EDUCATION—INTERPRETATION OF LEGISLATIVE ACT—SECTIONS 7605 AND 7607, GENERAL CODE, DISCUSSED.

SYLLABUS:

1. *When a board of education designates a bank or banks as depositories for the funds of the school district, such bank or banks may at the option of the board of education, secure the deposits of public funds by the giving of a good and sufficient bond, or the deposit of the classes of securities enumerated in Sections* 7605 *and* 7607, *General Code, as amended by the* 87*th General Assembly.*

2. *Where the language of a legislative act is ambiguous on its face, to determine its proper interpretation, resort may be had to the history and progress of the bill, which finally ripened into the act, during its pendency in, and passage by, the general assembly, as shown by the journal of the two houses of that body.*

COLUMBUS, OHIO, October 31, 1927.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication, as follows: