

in an extensive medical discussion with reference to the meaning of the word "infected", it would appear that the legislature did not intend that all dead bodies should be considered as being infected. If the legislature had been of a different mind, it would not have been necessary to have inserted two different fees in Section 2856-3, General Code, supra. No doubt the legislature intended that the fee should be reasonably commensurate with the work and risk involved in making the autopsy.

In your letter you inquire as to when a body is decomposed or infected. As indicated, this is a question of fact rather than one of law and is to be determined from the facts of each particular case. However, it is possible to say, as a matter of law, that every dead body is not decomposed or infected. Where a coroner charges a fee of \$40.00 for the performance of an autopsy, it should be the duty of the coroner to affirmatively show that the autopsy which he performed was on a decomposed or infected body.

In view of the above, it is my opinion, in specific answer to your inquiry, that under the provisions of Section 2856-3, General Code, a coroner who performs an autopsy should receive a fee of \$20.00, and where the body is infected or decomposed he should receive a fee of \$40.00. All dead bodies are not infected, nor are they decomposed, within the meaning of that term as used in Section 2856-3, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

6084.

APPOINTING AUTHORITY FOR EMPLOYEES OF COUNTY
BOARDS OF AID FOR THE AGED RESTS IN COUNTY
BOARD SUBJECT TO CIVIL SERVICE RULES.

SYLLABUS:

By virtue of House Bill No. 605, enacted in the First Special Session of the 91st General Assembly, appointing authority for investigators, clerks and other employees of county boards of aid for the aged is imposed in county boards of aid for the aged, without the necessity of any approval by the Division of Aid for the Aged, but such appointments must be made subject to civil service rules and regulations as provided in Section 1359-16, General Code, as amended.

COLUMBUS, OHIO, September 16, 1936.

State Civil Service Commission, Columbus, Ohio.

GENTLEMEN: I am in receipt of your communication, which reads as follows:

"House Bill No. 605 was approved by the Governor of Ohio April 15, 1936, and amends Section 1359-16, relative to the appointing authority in the Division of Aid for the Aged, as to all such investigators, clerks and other employees necessary in the various county boards of aid for the aged.

Will you kindly give us your opinion in the light of the entire amended chapter, as to the appointing authority."

Section 1359-16, General Code, prior to its amendment by House Bill No. 605, which amendment became effective as a law on July 16, 1936, provided in part as follows:

"Each board shall have authority to employ, subject to approval by the Division, such investigators, clerks and other employees as are absolutely necessary for the performance of its duties under this act and to fix the compensation of all employees subject to approval by the Division."

Section 1359-16, General Code, as amended by House Bill No. 605, was amended so as to omit so much of the section as is above quoted. In other words, neither Section 1359-16, General Code, nor any other sections of the Old Age Pension Act now contain any express authority to county boards to employ investigators, clerks, or other employees as are necessary for the performance of its duties under the act. However, the Old Age Pension Act, in its amended form, clearly implies the existence of such authority upon the part of the county boards of aid for the aged. For example, Section 1359-15 of the amended act provides inter alia:

"The division shall have the duty and authority * * * to make rules and regulations governing applications for aid * * * appointment, qualifications and salaries of investigators and other *employees of the boards*, all of which investigators and other employees shall be appointed subject to civil service rules and regulations." (Italics the writer's.)

Likewise, Section 1359-16, General Code, provides in part:

"The salaries of employees, * * * of each county board,

upon approval of vouchers therefor by the division, shall be paid by the treasurer of state * * *."

It appears from the above quoted provisions that the Old Age Pension Act contemplates that county boards are to have employees, assistants, investigators and others. It is manifest that such county boards cannot obtain such employees unless they have the power to appoint them, but in the absence of the express power so to do, it is thought that the power must of necessity be implied from the provisions above quoted.

As stated in Black on Interpretation of Laws, page 575:

"It will be presumed that a word used in a certain sense in the original act is used in the same sense where it occurs in the amendatory act."

It would be anomalous to refer to a class of public servants as "employees of the board", if they were in fact employed by someone else.

Amended Section 1359-16, General Code, in place of the above quoted deletion, provides:

"All such investigators, clerks and other employees shall be appointed subject to civil service rules and regulations."

These words would be meaningless unless read in connection with what follows in the section, namely, "Salaries of employees * * * of each county board * * *." And in reference to the preceding section, namely, Section 1359-15, which also provides that "employees of the boards" shall be appointed subject to civil service rules and regulations.

With reference to the deletion of Section 1359-16, General Code, it is entirely possible to account for the elimination of the former provision by considering the awkward manner of appointment contained in Section 1359-16, General Code, prior to its amendment. Under the original provisions, the county boards of aid for the aged did not have unqualified power to make appointments of administrators, investigators, etc. Their power to hire employees was subject to the approval of the Division of Aid for the Aged, and the evident purpose of deleting the former provision of Section 1359-16, General Code, was to do away with the necessity of approval by the Division of Aid for the Aged and to give the county boards not less power than they had before but more power in this respect in that the approval of the Division of Aid for the Aged is no longer required, but in lieu of such approval, civil service rules and regulations are to be substituted. In support of this interpretation, I call your attention to a recent decision of the Court of Appeals of Franklin County.

In State, ex rel. Davidson, et al. v. Margaret M. Allman and Henry J. Berrodin, being case No. 2624, decided May 21, 1936, the language of the court construing the former provision of Section 1359-16, General Code, is in part as follows:

“Though it is not necessary to our question, it is obvious that the right of disapproval reposes in the ‘Division’ in the Old Age Pension Act the power to dictate the appointment of the employees in the office of the Boards, if there is difference between the Boards and the Division as to such appointments. *The propriety of vesting this authority in the Division is for the Legislature and has been changed in the amendment to Section 1359-16, effective July 16, 1936, House Bill 605.*” (Italics the writer’s.)

For a thorough consideration of the problem, it is also necessary to examine Section 1359-11, General Code. The act provides in this section that for the purpose of administering the law there is created a Division of Aid for the Aged in the State Department of Public Welfare and the Chief of such Division, as provided for, to be appointed by the Director of Public Welfare with the approval of the Governor. Such section then proceeds to vest such Chief of the Division with the following power:

“He shall appoint all necessary assistants, investigators, clerks and other employees and fix their duties and salaries subject to the approval of the Director of Public Welfare.”

Prior to the amendment of the Old Age Pension Law by House Bill No. 605, this section was necessarily limited, as will be shown infra, to the appointment of assistants, investigators, clerks and other employees of the state division itself, as distinguished from those working for the counties. Moreover, Section 1359-11, General Code, is not amended in House Bill No. 605 nor even mentioned. In my opinion, this section is entirely insufficient to vest the power of the appointment of “investigators, clerks and other county employees” in the Division of Aid for the Aged. The elimination from Section 1359-16, General Code, of the language pertaining to the express authority of the county boards to hire employees, indicates nothing in and of itself as to who might be substituted for the county boards in the discharge of these functions. That is to say, if the General Assembly had in mind to transfer from the county boards to someone else the appointment of local county employees, it could not fully accomplish that result merely by repealing the provision authorizing the county board to make the appointments, as it would be

necessary to go further and provide who should make these appointments in lieu of the county board. An examination of the entire act discloses but one section pertaining to the power of the Chief of the Division of Aid for the Aged to make appointments, which, as stated before, is not sufficient in law to grant the power herein sought. In the first place, as hereinbefore indicated, the act contemplates that county boards shall have employees of their own for the purposes of the act, and manifestly one who is an employee of the Division of Aid for the Aged is not an employee of the county board.

Another main consideration leading to the determination that the board itself has implied power to make appointments is the fact that the original act provided authority to the Chief of the Division of Aid for the Aged in Section 1359-11, General Code, to employ and appoint investigators, assistants, etc., and further provided that in Section 1359-16, General Code, each county board should have authority to employ, subject to approval by the division, such employees as were necessary. Hence, the power conferred by Section 1359-11 upon the Chief of the Division of Aid for the Aged to make appointments was plainly limited to the appointment of investigators, assistants and other employees in his own division, and since that section has neither been amended nor re-enacted, it appears that its terms cannot be construed to grant any more power to the Chief of the Division of Aid for the Aged than was originally conferred by the act. That is, it is my opinion that the amendment of Section 1359-16, General Code, with respect to the express power of county boards to make appointments for the county boards, did not in any way operate to amend or extend the provisions of Section 1359-11, General Code.

Specifically answering your inquiry, it is my opinion that by virtue of House Bill No. 605, enacted by the first special session of the 91st General Assembly, appointing authority for investigators, clerks and other employees of county boards of aid for the aged is imposed in county boards of aid for the aged without the necessity of any approval by the Division of Aid for the Aged, but such appointments must be made subject to civil service rules and regulations as provided in Section 1359-16, General Code, as amended.

Respectfully,

JOHN W. BRICKER,
Attorney General.