

1779.

APPROVAL, BONDS OF PERRY TOWNSHIP RURAL SCHOOL DISTRICT,
PIKE COUNTY—\$13,000.00.

COLUMBUS, OHIO, April 14, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1780.

MEMBERS—OF CITY POLICE—RIGHT TO CREATE FUND OTHER
THAN POLICE RELIEF FUND—CONDITION NOTED.

SYLLABUS:

1. *Members of a city police department may create a fund other than the police relief fund into which contributions by members of the department and donations by private parties are placed. However, the funds required by statute to be placed to the credit of the police relief fund may not be placed and used in connection with the said private fund.*

2. *The members of a police department may make such rules and regulations for the management and distribution of said private relief fund as they choose. Such a fund has no relation whatever to the police relief fund provided by statute.*

COLUMBUS, OHIO, April 15, 1930.

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

GENTLEMEN:—Acknowledgment is made of your communication of recent date, which reads:

“Section 4625, General Code, relating to the Police Relief Fund, reads:

‘The trustees of the fund may also receive such uniform amounts from each person designated by the rules of the police department, a member thereof, as he voluntarily agrees to, to be deducted from his monthly pay, and the amount so received shall be used as a fund to increase the pension which may be granted to such person or his beneficiaries, or in the discretion of such trustees money derived from such monthly deductions shall be used to relieve members of the force who contribute thereto when sick or disabled from the performance of duty, for funeral expenses, relief of their families in case of death or for pensions when honorably retired from the force.’

Question 1. May the members of a city police department legally create a fund other than the Police Relief Fund, into which are paid contributions by members of the Department, and donations by private parties, which are given for the express purpose of increasing the private fund maintained by such members of the Police Department?

The contributions of members of the Department are made to such private fund expressly, and are not contributed to the Police Relief Fund, which is created by a tax levy exclusively.

Question 2. May members of a city police department maintain such private relief fund and adopt rules for the selection of a board of trustees

from among their own membership, such board being separate and independent of the board of trustees provided for by Section 4616, General Code."

In my Opinion No. 1632, issued to your Bureau under date of March 18, 1930, an extended discussion was made with reference to the status of the police relief fund, and it is believed unnecessary for the purpose of this opinion to discuss the status of said fund extensively.

It is understood from a verbal communication with your Bureau that you have in mind a fund which is raised among the members of the police department voluntarily, not in pursuance of any statutory requirement with reference to the establishment of the fund which is provided for by statute.

Section 4621, General Code, requires the levying of a tax, not to exceed three-tenths of a mill, in each municipality establishing a police relief fund. Section 4625, which you set forth, authorizes the trustees of the police relief fund to receive amounts from members of the police department when voluntarily given. Section 4623 also provides that certain fines, rewards, fees, etc., shall be credited to said police relief fund. Section 4624 also expressly authorizes the trustees of said fund to take by gift, grant, devise or bequest, moneys or real or personal property for the benefit of the fund. However, the fact that the statutes above mentioned provide for a police relief fund would in nowise prevent the members of a police department from having a voluntary fund of their own in addition to the fund which is the police relief fund, as established in pursuance of the statute. Of course, in such additional or voluntary fund there could not be placed any of the funds which are required to be placed in the police relief fund proper. In other words, the members of the police department are free moral agents and may dispose of their individual property the same as any other citizen. Likewise, persons seeking to make contributions for the benefit of said policemen could, of course, exercise their judgment as to whether they would make a donation to the statutory fund established for their benefit, or whether they would donate it to the so-called voluntary fund raised among the members not in pursuance of statutory authority.

In this connection it has been noted that in some instances so-called police relief sub-funds have been established. One such fund has come to my attention where-in it is disclosed that the members of the police department are seeking to act under the provisions of Section 4628 of the General Code. In the rules and regulations adopted it is provided that the board of trustees of the police relief fund shall administer the same. Said rules and regulations provide that all moneys collected through monthly assessments on the payrolls of the police department and all sums referred to in Section 4623, General Code, shall be known as said relief sub-fund. The said rules authorizing the distribution of the fund provide for a distribution in accordance with the purposes stated in Section 4625, which reads:

"The trustees of the fund may also receive such uniform amounts from each person designated by the rules of the police department, a member thereof, as he voluntarily agrees to, to be deducted from his monthly pay, and the amount so received shall be used as a fund to increase the pension which may be granted to such person or his beneficiaries, or in the discretion of such trustees money derived from such monthly deductions shall be used to relieve members of the force who contribute thereto when sick or disabled from the performance of duty, for funeral expenses, relief of their families in case of death or for pensions when honorably retired from the force."

From a careful reading of the said rules and regulations with reference to said so-called sub-fund, it appears to be clear that in establishing the same such officers

of the municipality were acting under the provisions of the statute which clearly authorize such procedure. In fact, said rules and regulations make the treasurer of the city the custodian of such funds. Under such circumstances, of course, such fund must be administered by the trustees of the police relief fund irrespective of how the same may be constituted as a matter of law, for the reason that Section 4625 contemplates such board administering the same. While, as hereinbefore indicated, there is nothing to prevent police officers from establishing a fund that is wholly independent of any statutory fund provided for, it is believed that any such action must clearly disclose that it is the intent of such officers to so establish such an independent fund. In other words, in all probability a fund in which it would not be clearly disclosed that action was being taken independent of the statute would be presumed to be in accordance with the provisions of the statute.

Based upon the foregoing, and in specific answer to your inquiry, it is my opinion that:

1. Members of a city police department may create a fund other than the police relief fund into which contributions by members of the department and donations by private parties are placed. However, the funds required by statute to be placed to the credit of the police relief fund may not be placed and used in connection with the said private fund.

2. The members of a police department may make such rules and regulations for the management and distribution of said private relief fund as they choose. Such a fund has no relation whatever to the police relief fund provided by statute.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1781.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF W. F. SEYMOUR
IN WASHINGTON TOWNSHIP, SCIOTO COUNTY.

COLUMBUS, OHIO, April 15, 1930.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval an abstract of title, warranty deed, encumbrance estimate, and other files, relating to the proposed purchase of three tracts of land owned of record by one W. F. Seymour in Washington Township, Scioto County, Ohio. The first of these tracts is three hundred and thirty-five acres in Survey No. 15353-15383, more particularly described by metes and bounds in the warranty deed tendered to the State of Ohio. The other two tracts, which are likewise more particularly described in said warranty deed, are one hundred and forty-five acres and fifty acres, respectively, in Survey No. 15578, Virginia Military Land.

Upon examination of the abstract of title submitted I find a number of objections which prevent my approval of the title to the several tracts of land here in question, which objections are noted as exceptions to said title.

1. Although there are a number of defects in the early history of the title to the lands here under investigation it seems fairly clear, if we assume the validity of the original surveys above mentioned, that George Davis owned the lands here in question as well as other lands in said surveys at the time of his death, which was apparently about the year 1895. It appears further that title to the said several tracts of land or parts thereof passed out of the ownership of the heirs of said George Davis