

1673.

## PROSECUTING ATTORNEY—EXPENSE ALLOWANCE—ADDITIONAL BONDS FOR SAME REQUIRED.

## SYLLABUS:

*Before the prosecuting attorney is authorized to draw upon the allowance provided in Section 3004, General Code, he must give the bond therein provided in addition to the official bond given by him as required by Section 2911, General Code.*

COLUMBUS, OHIO, February 3, 1928.

HON. JOHN H. HOUSTON, *Prosecuting Attorney, Georgetown, Ohio.*

DEAR SIR:—This will acknowledge your recent communication as follows:

“There is a controversy arisen between myself and Mr. Cleona Searles, of the Bureau of Inspection and Supervision of Public Offices, concerning whether it is necessary for the prosecuting attorney to give an additional bond to his regular bond under the provisions of Section 3004, G. C., of Ohio.

It is my contention that the second paragraph under 3004 has reference to the usual bond given by a prosecuting attorney for the faithful performance of his duties, and is made merely to prevent the payment of this fund into the hands of the prosecutor before said official bond has been rendered, while Mr. Searles, of State Bureau of Supervision maintains that it is necessary in addition to give said bond.

I would like to get your opinion on this matter as soon as possible to settle this controversy.”

The same question which you present has already received the consideration of this office. In the Opinions, Attorney General for 1915, Vol. 1, at page 785, is found the following syllabus:

“Before the prosecuting attorney of a county is entitled to a warrant from the county auditor for an expense allowance of an amount not to exceed one-half of his official salary, as authorized by the provision of Section 3004, G. C., he must give bond required by said section in addition to the official bond given by him as required by the provision of Section 2911, G. C.”

In the course of the opinion appears the following on page 786:

“While the conditions of the bond which a prosecuting attorney is required to give under the provision of Section 2911, G. C., are the same as those of the bond required by the provision of Section 3004, G. C., it will be observed that the amount of the bond required by the provision of Section 3004, G. C., must be not less than the amount of the salary of said officer, and the primary purpose of requiring the bond under Section 3004, G. C., as shown by the latter provision of said section, is to hold said officer accountable for the proper use of the allowance made to him under authority of said section.”

The general purpose of the bond required by Section 2911, G. C., is to secure the faithful performance of the official duties of the prosecuting attorney.”

I am in accord with the reasoning and conclusion of that opinion and you are consequently advised that, before the prosecuting attorney is authorized to draw upon the allowance provided in Section 3004, General Code, he must give the bond therein provided in addition to the official bond given by him as required by Section 2911, General Code.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1674.

## HIGHWAYS—COUNTY COMMISSIONERS—DUTIES AND OBLIGATIONS FULLY DISCUSSED

### SYLLABUS:

1. *Under the provisions of the various sections of the General Code relating to the state highway system, as amended in House Bill No. 67, passed by the 87th General Assembly, (Norton-Edwards Act), county commissioners are not under obligation to furnish any money for the construction and maintenance of roads and highways in the state highway system.*

2. *By the terms of Section 7464, General Code, as amended in House Bill No. 67, passed by the 87th General Assembly (Norton-Edwards Act), county roads are defined as including all roads, which have been or may be established as a part of the county system of roads as provided for in Sections 6965, 6966, 6967 and 6968, General Code, (commonly called the Green law), which shall be known as the county highway system.*

3. *By the terms of Section 7464, General Code, as amended in House Bill No. 67, passed by the 87th General Assembly (Norton-Edwards Act) and Section 7467, General Code, the duty of maintaining and repairing all county roads is placed on the county commissioners regardless of whether they be dirt roads or otherwise.*

4. *The county's portion of gasoline excise tax funds (Section 5537 and related sections of the General Code) may be only used for the purpose of maintenance and repair of roads in the county highway system, including roads that are unimproved.*

5. *The term "maintenance and repair" as used in Section 5537, General Code, embraces all work done upon roads and highways within the meaning of the term in its ordinary acceptation, and in addition thereto, includes all work done upon any public road or highway in which the existing foundations thereof are used as the subsurface of the improvement thereof in whole or in substantial part.*

6. *By the terms of Section 1224, General Code, as amended in House Bill No. 67, passed by the 87th General Assembly (Norton-Edwards Act) it is the duty of the Director of Highways to maintain and repair all roads and highways and all the bridges and culverts thereon in the state highway system.*

7. *By the terms of Section 7464, General Code, as amended in House Bill No. 67, passed by the 87th General Assembly (Norton-Edwards Act) and Sections 2421, 7557 and 7467, General Code, it is the duty of county commissioners to maintain and keep in repair all bridges on county roads.*

8. *It is also the duty of county commissioners to maintain and keep in repair bridges on township roads, although township trustees are authorized to appro-*