2028.

STATE TEACHERS' RETIREMENT SYSTEM—EXPENSES OF ADMINISTRATION INCLUDING PRINTING, PAPER, BINDING AND SUPPLIES CANNOT BE PAID OUT OF STATE FUNDS.

The expense of administration, including the printing, paper, binding and supplies needed by the state teachers' retirement system, cannot be paid out of any state funds or appropriations beyond the initial appropriation provided in section 1896-58 *G. C., but such costs are a charge against the expense fund of such retirement system and should be paid by the retirement board from the expense fund created under the provisions of section* 7896-56 *G. C., and if such expense fund or any of the other separate and distinct funds created are at any time depleted, and not sufficient to take care of any claims, the retirement board shall be governed by the mandate provided in* 7896-56*d and pay such deficit by transfers of moneys from the guarantee fund to the expense fund.*

COLUMBUS, OHIO, April 27, 1921.

HON. WALTER L. REMLEY, *Supervisor of Public Printing, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following question:

> "Paragraph E of section 56 of 'an act to provide a state wide retirement system' (Ohio Laws, Vol. 108, Part I, page 202) provides that 'the expense fund shall be the fund from which shall be paid the expense of the administration of this act * * *.'
>
> "Should the department having in charge the administration of the retirement system be required to pay for printing, paper and binding out of the fund created by paragraph E?"

Pertinent sections of the Teachers' Retirement Act (7896-1 to 7896-63 inclusive) read in part as follows:

> *Sec.* 7896-2: "A state teachers' retirement system is hereby established for the teachers of the public schools of the state of Ohio which shall include the several funds created and placed under the management of a 'retirement board' * * *. The retirement board herein created shall have the right to sue and be sued * * * and by such name all of its business shall be transacted * * * all warrants for money drawn and payments made * * *."
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> *Sec.* 7896-17: "All interest earned upon the entire amount of money belonging to said retirement system shall be divided among the various funds thereof proportionately, except that *no interest shall be credited to the guarantee and expense funds herein provided for.*"
>
> *Sec.* 7896-21: "The custodian shall furnish annually to the retirement board a sworn statement of the amount *of the funds* in his custody belonging to the retirement system. * * *"
>
> *Sec.* 7896-43: "* * * Each teacher shall pay with the first payment to the teachers' savings fund each year, and in addition thereto a sum to be determined by the retirement board but not to exceed one dollar, which amount shall be credited to the expense fund. * * *"
>
> *Sec.* 7896-56: "The funds hereby created are the teachers' savings fund,

the employers' accumulation fund, the annuity and pension reserve fund, *the guarantee fund* and the *expense fund.*

* * * * * * * * *

(e) The expense fund shall be the fund from which shall be paid the expense of administration of this act, exclusive of amounts payable as retirement allowance and as other benefits as provided in this act."

Sec. 7896-58: The sum of ten thousand dollars is hereby appropriated from the moneys in the general revenue fund of the state of Ohio, not otherwise appropriated, for the expense of establishing, organizing and *starting the operations of the retirement system* and of establishing an office therefor. *This sum shall be credited to the expense fund and* expended only on order of the retirement board."

A careful analysis of the sixty-three sections composing the teachers' retirement act, including those above cited, indicate that it was the intention of the general assembly that the expense of the administration of the act should be cared for entirely from the expense fund created in the manner above set forth. That is to say, the law-making body set a definite limit on the aid that was to be given in the establishment, organizing and starting the operations of the retirement system, and this was the appropriation of $10,000 to the expense fund, as provided for in section 7896-58. This section then says that such sum shall be "credited to the expense fund" and was not to constitute the expense fund for any definite time, but, in other words, would be the first entry of moneys received for the expense fund. This would then be followed by the receipts from the teachers themselves in contributing, with the starting of the system, the sum of $1.00, which also was to be credited to the expense fund. The expense fund began with the starting of the system and if any amount were left of the $10,000 granted by the general assembly to the expense fund, the same would be commingled with the amounts received from the teachers thereafter in their payment to the expense fund. Conversely, if the $10,000 was not entirely sufficient to cover all of the administrative expenses in the starting of the state teachers' retirement system, then these obligations would still lie against the expense fund which had been augmented later by the flow of funds from the teachers themselves as provided in section 7896-43. The teachers' retirement act itself has safeguarded the depletion of the expense fund so that it may always be ample for every and any expense of administration, provided that if at any time the expense fund is about to be depleted, then there shall be made a transfer from the guarantee fund, as set forth in section 7896-56, paragraph (d), reading as follows:

Sec. 7896-56: "A guarantee fund is hereby created to facilitate the crediting of uniform interest on the amounts in the various other funds with the exception of the expense fund, and *to provide a contingent fund out of which special requirements of any of the other funds may be covered.* All income, interest and dividends derived from the deposits and investments authorized by this act shall be paid into the guarantee fund.

The retirement board is hereby authorized to accept gifts and bequests. Any funds that may come into possession of the retirement system in this manner or which may be transferred from the teachers' savings fund by reason of lack of claimant or because of a surplus in any fund created by this act or any other moneys whose disposition is not otherwise provided for herein shall be credited to the guarantee fund.

The interest allowed by the retirement board to each of the funds as provided in this act, shall be paid to such funds from the guarantee fund. *Any deficit occurring in any fund which would not be automatically covered by the payments to that fund as otherwise provided by this act, shall be met by payment from the guarantee fund to such fund.*"

Indicating further that the expense of administration in every detail must be paid by funds coming into the retirement system itself, is the language of 7896-57 G. C., which says:

"* * * If the amount estimated to be required to meet the expenses of the retirement board is in excess of one dollar per contributor for the year, the amount *of* such excess shall be paid from the guarantee fund.* * *"

It therefore must be apparent in the light of the above sections, that no occasion would ever arise where the expense fund of the teachers' retirement system would ever be so depleted that further state aid should be granted to the teachers' retirement system for its expense fund than that provided for in the original grant of $10,000 for starting the same by the general assembly. The guarantee fund stands as a safeguard at all times as a "contingent fund," out of which special requirements for any of the other funds may be covered. (7896-56d.) The law is mandatory in that if any deficit occurs in any fund, including the expense fund, which would not be automatically covered by the payments to that fund, such deficit "shall be met by payments from the guarantee fund." (7896-56d.) This guarantee fund is itself further safeguarded that if it ever becomes depleted, any necessary contribution shall be assessed by the retirement board in the succeeding years among the employers, that is, the boards of education and trustees of institutions, on the basis of the amount of normal contributions paid by them. However, with careful administration, any such assessment to the guarantee fund would hardly ever be necessary because all the income, interest and dividends derived from the investments of the teachers' retirement system shall be paid into the guarantee fund, thus apparently making that fund ample at all times to cover any deficits that might occur in the expense fund or any other fund of the teachers' retirement system.

Bearing directly upon your inquiry, if the teachers' retirement system, through its expense fund, safeguarded as above, did not pay for its printing, paper and binding, then such cost would necessarily come out of the appropriation made by the general assembly to some other department. The effect of this would be that instead of the expense fund of the teachers' retirement system, created, built up and safeguarded, as heretofore indicated, bearing this cost, the taxpayers of the state would be making a contribution to the teachers' retirement system, which was not contemplated by the general assembly in the enactment of the law, and for which there is no authority whatever. The legislature placed a definite limit on the aid that was to be given to the state teachers' retirement system in its inauguration, such sum being $10,000, duly appropriated from the state treasury "to be credited to the expense fund." In addition to this grant toward the expense fund, the general assembly then provided (7896-44 G. C.) that the employers, that is, the boards of education of the state, should pay until otherwise directed the total of 5.57 per cent on the total pay rolls of the teachers, while at the same time, under the provisions of section 7896-43 G. C., the teachers were to pay but four per cent of the compensation received. It is believed that the general assembly, in providing that the boards of education on disbursing the taxpayers' money, should pay more than the teachers in the creation of a fund for retirement purposes, felt that the primary expense of overhead operation, that is, the expense fund, should be taken care of by the contributors themselves after the state had started off the system by its contribution of $10,000 toward the expense fund. The grants made by the general assembly appearing in the act are definite and specific and there is no authority in law for the furnishing of the printing, paper and binding needed by the state teachers' retirement system out of any state funds or appropriations, but such costs are a charge against the expense fund of such retirement system and should be paid by the retirement board from the expense fund created in section 7896-56 G. C., and if such expense fund is at any time depleted and not sufficient to take care of any claims against it, the retirement board should be governed by the mandate appearing in section 7896-56d and pay such deficits by transfers of moneys from the guarantee fund to the expense fund.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2030.

BANKS AND BANKING—COUNTY COMMISSIONERS WITHOUT AUTHORITY TO BORROW MONEY AT RATE OF INTEREST IN EXCESS OF SIX PER CENTUM UNDER SECTION 2434 G. C.

Under the provisions of section 2434 G. C. the county commissioners cannot borrow money at a rate of interest in excess of six per cent.

COLUMBUS, OHIO, April 28, 1921.

HON. HARRY BRITTON, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR:—Your communication of recent date reads, in part, as follows:

> "I am directed by the county commissioners of this county to get your opinion on the following question:
>
> At the present time the commissioners have money borrowed from various banks in the county at six per cent interest, and at the present time the infirmary fund is very low and the commissioners cannot pay the employes of the infirmary from this fund, and the banks of this county will not loan money at a rate of interest less than seven per cent. Would it be possible for the county commissioners to borrow money for infirmary purposes at a rate of seven per cent interest?"

Section 2434 G. C., to which you refer, provides, among other things, that the county commissioners may borrow money "for the relief of the poor * * * at a rate of interest not to exceed six per cent," as stated in your letter.

In considering your inquiry it will be observed that one of the outstanding principles of Ohio jurisprudence is that money cannot be disbursed from the public treasury except by clear authority of law. See *State ex rel.* vs. *Maharry,* 97 O. S. 272. It further has been held that when the statute places a limitation upon the amount of money that may be expended for a given purpose the contractual power of an officer or board is likewise fixed by such statutory limitation. See *State ex rel.* vs. *Pierce,* 96 O. S. 44.

In the case you mention, where money is borrowed under the provisions of section 2434 G. C., the commissioners issue the bonds of the county to secure the