

6607.

COUNTY COMMISSIONERS—MAY NOT AUTHORIZE ALLOWANCE OF ADDITIONAL EXPENSES OF COUNTY ADMINISTRATOR OF AID FOR THE AGED WHEN.

SYLLABUS:

County commissioners have no authority to supplement allowances for expenses of the county administrator of aid for the aged where the State Division of Aid for the Aged, by virtue of their rule and regulation making authority, under Section 1359-15, General Code, have provided an automobile allowance at 4½ cents per mile as traveling expenses, and have provided for the cost of meals for such administrator while traveling on official business.

COLUMBUS, OHIO, January 6, 1937.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR: I am in receipt of your communication which reads as follows:

“The Seneca County Administrator of the Division of Aid for the Aged is now paid a salary of \$96.00 per month by the State Division and a car allowance of \$0.04½ per mile for traveling and cost of meals while away from the city of Tiffin, the seat of Seneca County, all of which shall not exceed \$25.00 per month.

The County Commissioners are now inquiring as to whether or not they may supplement this allowance of \$25.00 per month and pay to the administrator the difference between the allowance made by the State of Ohio and the actual cost of transportation and meals, basing the transportation costs upon a fixed rate of \$0.05 or \$0.06 per mile, such rate to be fixed by the commissioners.”

The provisions of the Ohio Old Age Pension Law, Sections 1359-1 to and including Section 1359-40, General Code, which are necessary in consideration of this problem, are as follows:

Section 1359-11:

“For the purpose of administering the provisions of this act, there is hereby created in the State Department of Public Welfare a Division of Aid for the Aged, herein referred to as the “Division”. The chief of the Division shall be under the

direct supervision and control of the Director of Public Welfare, * * *.

Section 1359-12:

“In each county of the state there shall be a Board of Aid for the Aged for the purpose of administering the provisions of this act, herein referred to as the “Board.” The county commissioners of each county shall constitute such boards, except that upon the adoption of a resolution by a majority of the commissioners of any county, requesting the appointment of a separate board for said county, the Chief of the Division of Aid for the Aged, subject to * * *, shall appoint a board, * * *.”

Section 1359-15:

*“The Division shall have the duty and authority to * * * make rules and regulations governing * * *, appointment, qualifications and salaries of investigators and other employees of the boards, * * *; and such rules and regulations, and all the decisions and orders of the Division shall be binding upon all county boards.”* (Italics the writer’s.)

While it might be contended that the power to make rules and regulations governing “salaries” of investigators and other employees of county boards of aid for the aged, does not include rules relative to “expenses”, it is my opinion that the case of *State ex rel v. Tracy*, 128 O. S. 242 is authority for the proposition that in cases of the instant type, “expenses” should be considered in the same category as salaries.

Construing the above statutes in *pari materia*, it is apparent that such rules and regulations for the operation of the Old Age Pension Law are set by the chief of the division, subject to the approval of the Director of Public Welfare. All employees under this law are subject to these rules and regulations. The Seneca County administrator of the Division of Aid for the Aged is such an employee, and the rule making power, which the Central Division of Aid for the Aged holds over his appointment, qualification and salary are specifically and clearly set forth in Section 1359-15, General Code, quoted *supra*. No regulation concerning him, which is contrary to these standards, can be accomplished legally without the approval of the Chief of the Division of Aid for the Aged. Such employee’s duties and salaries are fixed by the Chief of the Division of Aid for the Aged, subject to the approval of the Director of Public Welfare, as provided in Section 1359-11, General Code, quoted *supra*.

In accordance with the provisions of this latter section, I assume that the Division of Aid for the Aged, has provided for the allowance of four and one-half cents per mile for traveling and cost of meals, all of which shall not exceed \$25.00 per month. This amount has been deemed adequate by the Division and the Director of Public Welfare and has been the uniform rate under which all the employees of the Division operate.

I also assume that the county commissioners in seeking to supplement the expense allowance of the county administrator, are acting in their official capacity relative to the Old Age Pension Law, as provided in Section 1359-12, General Code, quoted supra, which recognizes them as the county administrative board. However, by virtue of Section 1359-15, General Code, it is provided in clear and concise language that the rules and regulations fixed by the Division of Aid for the Aged and pertinent to the salaries of any of the employees of the county boards, shall be binding upon all county boards. This language being clear and unambiguous, there is no occasion for interpretation. See *Stanton v. Realty Co.*, 117 O. S. 345 at Pages 349 and 350 and *Slingluff v. Weaver*, 66 O. S. at Page 620.

Moreover, it is to be observed that grants for old age pensions and the administration of the Old Age Pension Law, are from State funds and I am unable to find any authority for the county to make appropriations for old age pension grants or administration expenses.

Consequently, I am of the opinion, in specific answer to your inquiry, that it is not within the authority of the county commissioners to supplement the amount allowed for expenses to the Seneca County Administrator of Aid for the Aged.

Respectfully,

JOHN W. BRICKER,
Attorney General.

6608.

APPROVAL—BONDS OF ASHLEY VILLAGE SCHOOL DISTRICT, DELAWARE COUNTY, OHIO, \$35,000.00.

COLUMBUS, OHIO, January 6, 1937.

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