

1915.

APPROVAL, BONDS OF BERLIN RURAL SCHOOL DISTRICT, ERIE COUNTY—\$4,900.00.

COLUMBUS, OHIO, May 28, 1930.

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

1916.

EXPENSES—FOR TRIP MADE OUTSIDE STATE TO SIGN BONDS VIA RENTAL OF SIGNATURE MACHINE—WHETHER SUCH EXPENSES OF AUDITOR AND COMMISSIONERS CHARGEABLE TO COUNTY CONSIDERED.

SYLLABUS:

Whether on not the expenses of county commissioners, their clerks and the county auditor, made on a trip outside of the state for the purpose of signing a large issue of bonds by the use of a signature machine, and the rental of such machine, may properly be paid from the county treasury is a question of fact to be determined from all of the circumstances.

COLUMBUS, OHIO, May 28, 1930.

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

GENTLEMEN:—Acknowledgment is made of your communication requesting my opinion as follows:

“The county commissioners, two of their clerks, and the county auditor of a certain county in this state, made a trip to Chicago for the purpose of signing a large issue of bonds by the use of a signature machine.

Question 1. May the expense of such officers incurred in traveling to Chicago and return be legally paid out of the county treasury?

Question 2. Can the rental of the signature machine be legally paid out of the county treasury?

Question 3. In the event that these items have been paid, may they be recovered if held to be illegally paid?”

The question of reimbursing public officers for expenditures made in connection with their official business and duties has frequently been under consideration by this office in recent years. In my former opinion to you, No. 1747, issued under date of April 8, 1930, it was held, as disclosed by the syllabus:

“A board of education may legally pay personal traveling expenses of its clerk when under the direction of said board he travels to Columbus to confer with the Department of Education with reference to the state equalization fund, when such mission is reasonably necessary in view of the facts and circumstances.”

My said opinion above mentioned referred to an opinion of my immediate

predecessor, found in Opinions of the Attorney General for the year 1928, p. 553, wherein it was held:

"The board of education of a rural or village school district is without authority to pay items of traveling expense incurred by the clerk of said board."

Said 1928 opinion contains an extended discussion of the authorities bearing upon the question generally. The following quotation is contained therein from 23 American and English Encyclopaedia of Law, Second Edition, Volume 23, page 389.

"Where the law requires an officer to do what necessitates an expenditure of money for which no provision is made he may pay therefor and have the amount allowed him."

The following quotation from Throop on Public Offices, Section 495, is also set forth:

"A public officer is entitled to receive from the public authority which he represents, reimbursement for extraordinary expenses necessarily incurred by him, in the course of, or in consequences of the discharge of his official duties, and not intended to be covered by the compensation allowed to him, the rule in this respect being the same as in cases of private agency."

Irrespective of past holdings, the more recent opinions of the courts and also of the Attorney General's office are to the effect that necessary traveling and other expenses by a public official in the performance of his duties are clearly not a part of his compensation and are not included therein. Therefore, it follows that when he is reimbursed for such expenditures he is not receiving increased compensation.

From the foregoing, it will be seen that your inquiry is a question of fact rather than a question of law; that is to say, the answer to the question which you propound necessarily depends upon whether or not the expenditure under consideration is one that is reasonably necessary in view of the duties to be performed by the officials mentioned. Of course, the power and duty of county commissioners to execute bonds issued by the county, in pursuance of the provisions of statute, are so well known as to require no elaboration herein. Whether or not a given issue of bonds may contain such numerous individual bonds which require the signature of the commissioners, and other circumstances exist relative to the execution and delivery of such bonds and coupons, in view of modern business methods employed in such transactions, so as to justify the rental of a signature machine and a trip to Chicago, as hereinbefore indicated, is a question of fact. It is a question of fact first as to whether such a machine is needed and, if needed, it is another question of fact as to whether it is necessary, under all the circumstances, to go out of the state for such service. On its face, such an expenditure would appear to be without justification in view of the usual practice and the time required in connection with such duties. In the final analysis, however, as hereinbefore stated, it is a question that must be determined from all of the facts, which are not before me.

In the event such an expenditure is illegal in view of the facts and circumstances, it follows that the same could be recovered under the provisions of Section 286 of the General Code. In the case of *Hicksville vs. Blakeslee*, 103 O. S. 508, the court in construing the above section held that money illegally paid to one who has secured a purchaser of bonds, for expenses and commissions, may be recovered.

As I have heretofore indicated, it is difficult for me to conceive that it was necessary for these various officials to go outside the state in order to place their signatures

upon the bonds. This they could have done at home, although doubtless the time consumed in executing them individually would be a great deal more than that occupied by the use of the signature machine. Yet there may be facts peculiar to this situation that would justify the expenditure and, in the absence of a complete investigation, it is impossible to reach any definite conclusion as to the validity of the expenditure. It is also true that extravagance in the use of public funds may exist without any specific expenditure which may be stated to be illegal. In such a situation the remedy is at the polls rather than in an action to recover the amounts expended.

Under the circumstances of the instance you cite, I do not feel that a more categorical answer to your questions may be given.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

1917.

REVENUE—COLLECTED BY CONSERVATION COMMISSIONER FROM
 RENTALS FOR LEASES IN OR ADJACENT TO STATE RESERVOIR
 PARKS—CREDITED TO GENERAL REVENUE FUND OF OHIO.

SYLLABUS:

All revenues collected by the conservation commissioner from rentals for leases of state lands, pipe permits, boat leases, dock leases in state reservoir parks and moneys for special privileges of any nature in or adjacent to such parks, should be deposited in the general revenue fund of the state.

COLUMBUS, OHIO, May 28, 1930.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“In reference to the creation of a Conservation Commissioner by amended Senate Bill No. 131 of the 88th General Assembly of Ohio, there has been some doubt expressed as to whether the collections in this new department are to be credited to the General Revenue Fund or to separate Rotary Funds for each park or pleasure resort.

Sec. 478 of amended Senate Bill No. 131, 113 O. L., to be found on page 555 reads as follows:

“The Conservation Commissioner shall collect or cause to be collected, all rentals for leases of state lands, pipe permits, boat licenses, dock licenses, in state reservoir parks and moneys for special privileges of any nature in or adjacent to such parks and shall keep such accounts in separate books to be provided for that purpose, and in transmitting such funds to the State Treasurer he shall accompany them with a separate statement, giving the names of persons from whom and for what purpose such moneys were collected, and to what park or pleasure resort such funds are to be credited, and shall furnish a duplicate statement to the Auditor of State.

Sec. 480 of amended Senate Bill No. 131, 113 O. L. to be found on page 573 reads in part as follows:

‘All moneys derived from such fees shall be credited to the general state fund, * * *’