

OPINION NO. 69-159

Syllabus:

The General Assembly intended the Prosecuting Attorney to determine, in his discretion, the expenditures to be made from the fund established pursuant to Section 325.12, Revised Code, and that his discretion is limited only by the purposes for which such fund may be expended, as set forth in such section.

To: Thomas C. Hanes, Darke County Pros. Atty., Greenville, Ohio
By: Paul W. Brown, Attorney General, December 8, 1969

Your request asks my opinion as to whether or not you, as Prosecuting Attorney, can purchase closed circuit T.V. for utilization in taking statements from accused persons so as to have an exact record of such person having been advised lawfully, utilizing your "Furtherance of Justice Fund" to provide the cost of such equipment? The fund with which your request is concerned is provided for by Section 325.12, Revised Code, which reads as follows:

"There shall be allowed annually to the prosecuting attorney, in addition to his salary and to the allowance provided for by section 309.06 of the Revised Code, an amount equal to one half of the official salary, to provide for expenses which may be incurred by him in the performance of his official duties and in the furtherance of justice. Upon the order of the prosecuting attorney, the county auditor shall draw his warrant on the county treasurer, payable to the prosecuting attorney or such other person as the order designates, for such amount as the order requires, not exceeding the amount provided by this section to be paid out of the general fund of the county.

"Nothing shall be paid under this section until the prosecuting attorney has given bond to the state in a sum, not less than his official salary, to be fixed by the court of common pleas or the probate court, with sureties to be approved by either of said courts, and such bond shall be conditioned that he will faithfully discharge all the duties enjoined upon him, and pay over all moneys received by him in his official capacity. Such bond, with the approval of such court of the amount thereof and sureties thereon, and his oath of office enclosed therewith shall be deposited with the county treasurer.

"The prosecuting attorney shall, annually, before the first Monday of January, file with the auditor an itemized statement, verified by him as to the manner in which such fund has been expended during the current year, and shall if any part of such fund remains in his hands unexpended, forthwith pay such remainder into the county treasury."

On numerous occasions in the past, my predecessors have been asked whether or not certain expenditures could be made from the Prosecuting Attorney's Furtherance of Justice Fund. Opinions were accordingly rendered with respect to the specific expenditures in question. Upon careful review of such opinions and of the statute itself, I am not persuaded that it is the proper function of this office to advise as to whether or not specific expenditures can be made from such fund. The General Assembly, in enacting Section 325.12, supra, clearly established the purposes for which such fund might be used, i.e., "to provide for expenses which may be incurred by him [prosecuting attorney] in the performance of his official duties and in the furtherance of justice." It is my opinion that the General Assembly intended discretion to be exercised by the prosecuting attorney in the expenditure of this fund limited only by the purposes for which the fund might be expended, as set forth in Section 325.12, supra.

Section 325.12, supra, requires payment from the fund upon the order of the prosecuting attorney limited only by the amount of the fund as provided for by this section. In addition, the statute requires that the prosecuting attorney post bond before any amount is paid under this section. Finally, an annual itemized statement must be verified by the prosecuting attorney, filed by him with the auditor and he must pay over the unexpended balance in the Furtherance of Justice Fund at the end of the year to the county treasurer. It seems quite clear to me that the legislative scheme was to provide a fund, with adequate safeguards to the county in the form of bond for faithful performance and annual accountings, with the determination as to whether or not a given expenditure is consistent with the purposes of the fund to be made by the appropriate prosecuting attorney. A continuation of past practices of this office ruling on specific requests can only result in the placing of artificial restrictions upon the use of the fund which were not intended by the General Assembly. There is simply no way that the Attorney General can put himself in the position of any given prosecuting attorney in making the determination as to whether or not a given expenditure would constitute "expenses which may be incurred by him in the performance of his official duties and in the furtherance of justice."

Support for this conclusion is found in the case of State, ex rel. v. Kearns, 70 Ohio L. Abs. 534 (CP). As the Court stated at page 536 of that opinion:

"The spirit of the law is that the prosecutor shall have the utmost freedom in the use of such funds for the purposes authorized by law."

This case was ultimately affirmed by the Ohio Supreme Court at 165 Ohio St. 573 (1956).

The Common Pleas Court had earlier held, in quashing the original indictment in the Kearns case, at 70 Ohio L. Abs. 71,73, as

follows:

"The examiner of public offices may not be permitted to question the judgment of the prosecutor in the spending of such funds, but this does not justify the use of such funds for his own needs and pleasure."

Therefore, it is my opinion and you are hereby advised that the General Assembly intended the Prosecuting Attorney to determine, in his discretion, the expenditures to be made from the fund established pursuant to Section 325.12, Revised Code, and that his discretion is limited only by the purposes for which such fund may be expended, as set forth in such action.