

gard the purpose for which poundage is allowed and given, namely, as a compensation to the sheriff for the risk incurred in handling and disbursing money actually received by him in his official capacity. Where no money is received and no risk incurred, no compensation by way of poundage is earned, and under the provisions of Section 1230, Revised Statutes, none can be allowed or charged."

As stated by Judge Crew in the opinion referred to, poundage is allowed as a compensation to the sheriff for the risk incurred in handling and disbursing money actually received by him in his official capacity. Where no money is received and no risk incurred, no compensation by way of poundage is earned.

You state that "the property was sold subject to the first mortgage which will be assumed by the purchaser." Inasmuch as the amount of money represented by the first mortgage was never received by the sheriff in so far as this amount is concerned no risk was incurred by him, and it follows that no compensation by way of poundage was earned by him and therefore cannot be allowed.

In view of the foregoing and answering your question specifically, it is my opinion that the sheriff is entitled to poundage only on the amount of money actually received by him in his official capacity.

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

1944.

COUNTY COMMISSIONERS—AUTHORITY UNDER SECTION 3019,  
GENERAL CODE—ALLOWANCES.

*SYLLABUS:*

*The phrase "at the first meeting in January," as used in Section 3019, General Code, is directory merely and a board of county commissioners has authority to make the allowance therein provided at a later meeting of such board.*

COLUMBUS, OHIO, April 7, 1928.

HON. F. E. CHERRINGTON, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR:—This will acknowledge your letter of recent date which reads:

"Section 3019, General Code, provides:

"\* \* \* the county commissioners, at the first meeting in January, shall make an allowance to justices of the peace and constables, in place of fees, \* \* \*"

A justice of the peace in and for this county did not make his claim until some time in February, this year; the commissioners are slow to allow the claim, stating that by reason of the J. P. not having his claims in so they could pass on it at the 'first meeting in January' they should not allow same."

Section 3019, General Code, to which you refer, provides:

"In felonies wherein the state fails, and in misdemeanors wherein the defendant proves insolvent, the county commissioners, at the first meeting

in January, shall make an allowance to justices of the peace and constables, in the place of fees, but in no year shall the aggregate allowance to such officer exceed the fees legally taxed to him in such causes, nor in any calendar year shall the aggregate amount allowed such officer and his successor, if any, exceed one hundred dollars. If there be a successor, said amount shall be prorated on the basis of lost fees."

In Vol. 36 Cyc. at page 1157, the following language appears :

"A mandatory provision in a statute is one, the omission to follow which renders the proceeding to which it relates illegal and void, while a directory provision is one the observance of which is not necessary to the validity of the proceeding. Whether a particular statute is mandatory or directory does not depend upon its form, but upon the intention of the Legislature, to be ascertained from a consideration of the entire act, its nature, its object, and the consequences that would result from construing it one way or the other. \* \* \* When a particular provision of a statute relates to some immaterial matter, as to which compliance with the statute is a matter of convenience rather than substance, or where the directions of a statute are given merely with a view to the proper, orderly, and prompt conduct of business, the provision may generally be regarded as directory. When a fair interpretation of a statute, which directs acts or proceedings to be done in a certain way, shows that the Legislature intended a compliance with such provision to be essential to the validity of the act or proceeding, or when some antecedent and prerequisite conditions must exist prior to the exercise of power, or must be performed before certain other powers can be exercised, then the statute must be regarded as mandatory. \* \* \* A statute specifying a time within which a public officer is to perform an official act regarding the rights and duties of others is directory merely, unless the nature of the act to be performed, or the phraseology of the statute, or of the statutes relating to the same subject-matter, is such that the designation of time must be considered a limitation upon the power of the officer. \* \* \*

As stated by Judge Bartley in the case of *Hubble vs. Renick*, 1 O. S. 171, at page 175:

"Where an act is of the essence of the thing required by law, or in other words, where it is essential to accomplish the object and intent of the law, it is imperative, and cannot be dispensed with, but otherwise it is merely directory."

In the case of *State ex rel. Hayden vs. Donahy, Auditor*, 21 O. N. P. (N. S.) 249, at page 255, the following language appears :

"It is well settled that a statute prescribing duties of public officials will be held to be directory and not mandatory in cases where that which has been done substantially accomplishes the purpose of the statute."

In view of the foregoing I am of the opinion that the phrase, "at the first meeting in January" as those words appear in Section 3019, supra, relate to an immaterial matter as to which compliance with the statute is a matter of convenience rather than substance. In other words, the directions of Section 3019, supra, viz.: "at the first meeting in January," are given merely with a view to the proper, orderly and prompt conduct of business.

Specifically answering the question that you present, it is my opinion that the phrase "at the first meeting in January," as used in Section 3019, General Code, is directory rather than mandatory and a board of county commissioners has authority to make the allowance therein provided at a later meeting of such board.

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

1945.

APPROVAL, ABSTRACT OF TITLE TO LAND OF EDWARD CUNNINGHAM AND CAROL CUNNINGHAM, IN NILES TOWNSHIP, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, April 7, 1928.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—You recently submitted for my opinion an abstract of title in a deed executed by Edward Cunningham and Carol Cunningham, his wife, covering the following lands situated in Nile Township, Scioto County, and more particularly described as follows:

FIRST TRACT: Lying and being on the waters of Turkey Creek, a branch of the Ohio River, within the Virginia Military District. Beginning at a stone in Williamson's Run; thence N. 23 degrees 45' E. 8 poles to a gum on the hillside; thence N. 38 deg. 45' E. 19 poles 22 links to a stone; thence N. 44 deg. 30 E. 16 poles to a black oak; thence N. 42 deg. E. 19 poles 12 links to a black oak; thence N. 42 deg. 30' E. 14 poles to a pine; thence N. 47½ deg. E. 12 poles to chestnut oak on top of a high knob, the original corner being a pine; thence with the original line reversed N. 36 deg. 45' E. 13½ poles to a stake on the ridge; thence N. 7 deg. E. 12-84/100 poles to a stake one rod E. of top of the ridge; thence N. 27½ deg. crossing the Northern line of Survey No. 15890 at 12-15/100 poles, 18-48/100 poles to a stake by a black oak on top of the ridge; thence N. 54 deg. W. 38-72/100 poles to a chestnut oak on top of the ridge; thence N. 20 deg. W. 11-21/100 poles to a stake on the ridge between Williamson's Run and Long Hollow; thence N. 27 deg. 38-38/100 poles to a pine and 2 hickories from one root on top of the hill N. corner to William Walker's tract and O. A. and M. C. lands; thence N. 23 deg. 30' W. 14 poles to a stake and small pine on top of the ridge between Harbert Fork and Turkey Creek; thence S. 45 deg. 15' W. 17 poles to a stake from which a pine six inches in diameter bears N. 18 deg. E. 19 links on the ridge; thence S. 35 deg. 35' W. 30-20/100 poles to a stake on top of the ridge; thence S. 32 deg. E. 18-24/100 poles to a stake and chestnut oak on top of ridge; thence S. 27 deg. 45' E. 12-52/100 poles to a stake and chestnut oak on the ridge; thence S. 5 deg. 15' E. 111-24/100 poles to a stake on top of ridge; thence S. 43 W. 26 poles to a chestnut oak on top of hill; thence down the hill S. 4 deg. E. 4 poles to a double chestnut oak; thence S. 20 deg. E. 16 poles to a pine; thence S. 2 deg. E. 14 poles 20 links to a chestnut oak; thence S. 10½ deg. E. 24 poles to a black oak; thence