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COUNTY VEHICLES REQUIRED TO BE PLAINLY AND CONSPICUOUSLY LETTERED AS COUNTY PROPERTY:

THOSE PURCHASED BY COUNTY COMMISSIONERS, OR BY COMMISSIONERS WITH APPROVAL OF COMMON PLEAS JUDGE, USE, SHERIFF OR COUNTY ENGINEER, THEIR DEPUTIES OR NECESSARY EMPLOYES, BOARD OF COUNTY COMMISSIONERS OR ANY DEPARTMENT UNDER ITS CONTROL — SECTIONS 2412-1, 2412-2 G.C.

SYLLABUS:

Under the provisions of Sections 2412-1 and 2412-2, General Code, all county vehicles purchased by county commissioners, or by county commissioners with the approval of the judge of the court of common pleas of such county, for the use of the sheriff or sanitary engineer, their deputies or necessary employes, or for the use of the board of county commissioners or any department under their direct control, are required to be plainly and conspicuously lettered as the property of the county.

Columbus, Ohio, May 16, 1941.

Honorable Erwin L. Clemens, Prosecuting Attorney,
Defiance, Ohio.

Dear Sir:

I have your request for my opinion which reads:

“Recently the Board of County Commissioners of Defiance County, Ohio, passed a resolution requiring all county trucks and automobiles to be lettered as provided for in Section 2412-2 of the General Code of the state of Ohio.

Inquiry was then made of me by the Sheriff, Superintendent of the County Infirmary, and Superintendent of the Children’s Home as to whether or not they would be required to letter their cars in compliance with this resolution.

I would therefore appreciate your opinion in answer to the following questions:

(1) Is the Sheriff required to letter the automobiles used by his department?

(2) Is the County Superintendent of the County Infirmary required to letter the cars used by his department?

(3) Is the Superintendent of the County Children's Home required to letter the cars used in his department?

Personally, I am of the opinion that under the Attorney General's ruling in 1925, being Opinion No. 2779, the cars to be lettered are only those under the direct control of the County Commissioners. This would include the automobiles of the County Infirmary only.

The Sheriff's car is under his direct control and therefore it is not necessary to have it lettered unless the Sheriff so orders. The equipment used by the County Children's Home is under the direct control of the Board of Trustees and the lettering of that equipment is subject to the rule of the Board of Trustees.

Due to the fact that there is some dissension between the Sheriff and the Board of County Commissioners, I will appreciate your opinion with reference to the questions above outlined taking into consideration Sections 2412-1 and 2412-2 of the General Code of the State of Ohio."

Sections 2412-1 and 2412-2, General Code, provide as follows:

Section 2412-1:

"That, whenever the board of county commissioners, deems it necessary to purchase a motor vehicle or vehicles for the use of the sheriff or sanitary engineer, their deputies or necessary employes they shall adopt a resolution setting forth the necessity for such purchase, together with a statement of the kind and number of vehicles required and the estimated cost of each such vehicle.

Upon the adoption of said resolution the board of county commissioners may purchase said vehicles for the use and purposes of the aforesaid persons or any of them. If the board of county commissioners deem it necessary to purchase a motor vehicle or vehicles for their use or for the use of any department under their direct control, application shall be made by them to a judge of the court of common pleas of said county, who, if upon the hearing thereof finds it necessary and expedient to purchase such vehicle or vehicles shall so order, fixing the number and kind of such vehicles, and the amount to be expended for each."

Section 2412-2:

“When purchased, such vehicle or vehicles shall be for the use of the county commissioners, or other county officials, such use to be subject to the regulation of the county commissioners. Such vehicles shall be used by each such officials or said deputies and employes in lieu of hiring vehicles, in the manner otherwise provided by law unless the county vehicles are not available for such use. When vehicles are so purchased, the county commissioners may purchase such supplies as may be necessary. Any vehicles heretofore acquired and now owned by the county shall be used as herein provided. *All such vehicles shall be plainly and conspicuously lettered as the property of the county.* No official or employe shall use or permit the use of any such vehicle or any supplies therefor, except in the transaction of public business or work of such county.” (Emphasis mine.)

The sections above quoted were first enacted in 1917, in “An Act — Authorizing county commissioners to purchase automobiles or other vehicles for the use of county officials in the transaction of public business” (107 v. 585). Such sections were amended to read as they now appear in the General Code on April 17, 1925 (111 v. 365), the chief differences between the sections as originally passed and as they now exist being that under the old sections county commissioners were empowered to purchase automobiles only “for the use of the county commissioners and county sheriff”; were required in all cases to obtain the approval of the common pleas court; and to give ten days’ notice in a newspaper of general circulation in the county of the time of the hearing on any application filed in such county. You will note that by the terms of Section 2412-1, *supra*, as it now reads, county commissioners are given complete discretion in the matter of purchasing “a motor vehicle or vehicles for the use of the sheriff or sanitary engineer, their deputies or necessary employes” but that to purchase “a motor vehicle or vehicles *for their (own) use or for the use of any department under their direct control,*” the approval of “a judge of the court of common pleas” of the county must first be obtained.” The philosophy underlying the requirement underscored is not hard to follow or to understand. It is grounded upon that ancient and fundamental principle of the common law that “no man should sit as a judge in his own case.” See Broom’s Legal Maxims, p. 90; *Tumey v. Ohio*, 273 U.S. 510, 71 L. Ed. 749 (1927).

In so far as Section 2412-2, *supra*, is concerned, the section containing the provisions which are dispositive of the questions asked in your letter, the only change of substance was that the terms of the

section were broadened so as to provide for the use of county vehicles by "county commissioners, or *other county officials*," instead of limiting such use to "the county commissioners and *county sheriff*" as theretofore. The governing provisions, namely, that the use of county vehicles is "to be subject to (the) regulation of the county commissioners" and that all such vehicles "shall be plainly and conspicuously lettered as the property of the county" were left unchanged.

It is fundamental that, as stated by Judge Donahue (sometime Judge, United States Circuit Court of Appeals for the Sixth Circuit) in his opinion in the case of *Sipe, Auditor, v. State, ex rel. Mansfield*, 86 O.S. 80, 87 (1912), "it is not the province of a court to improve or expand the language of an act, but to interpret it as it is written" and that the legislative "intent must be ascertained first, if possible, from the language used and where that language is clear and unambiguous courts have no authority to change it." See also *Black on Interpretation of Laws*, p. 11, et seq.

I am unable to see any lack of clarity or ambiguity in those parts of Section 2412-2, *supra*, to the effect that the use of county vehicles shall "be subject to the regulation of the county commissioners" and that all "such vehicles (i.e., vehicles purchased or owned by the county) shall be plainly and conspicuously lettered as the property of the county." And certainly the history of these sections under consideration, as above epitomized, serves not to muddle but only to make clear the conclusions herein reached. That is to say, while the power of county commissioners to purchase vehicles for *their own use* was restricted as above pointed out, yet their authority to regulate the use of county cars was in nowise abridged; nor was the positive direction of the Legislature that all county vehicles shall be plainly and conspicuously marked "as the property of the county," repealed, modified or changed in any manner. And, of course, the purpose of these provisions is manifest. They were obviously enacted and left undisturbed to make effective the commandment of the Legislature contained in the last sentence of Section 2412-2, *supra*, that county vehicles, purchased and maintained with the taxpayers' monies, should not be used "except in the transaction of public business or work" of the proper county.

I note that the conclusions arrived at by you, as expressed in the

fourth and fifth paragraphs of your request, are based upon Opinion No. 2779, Opinions, Attorney General, 1925, p. 598. The syllabus of that opinion reads:

"1. By amended senate bill No. 44, county commissioners may purchase motor vehicles, without the approval of the common pleas court, for the sheriff and sanitary engineer or their employes to be used *subject to the regulation of such officials.*

2. Under this act, county commissioners may purchase motor vehicles, with the approval of the common pleas court, for their own use or for the use of any department under their direct control. *When purchased, such vehicles shall be for the use of the county commissioners or other county officials.*" (Emphasis mine.)

In the body of the opinion it was said as follows at page 599:

"Construing section 2412-2 with section 2412-1 as they are amended, we come to the conclusion that the board of county commissioners may purchase motor vehicles for the sheriff and sanitary engineer without the approval of the common pleas court, and may, with the approval of the common pleas court, purchase vehicles for their use or for the use of any department under their direct control. It can not be said that other county officers are under the direct control of the county commissioners, such as to include them within the statute. By 'departments under the direct control of the county commissioners' it is believed is meant such as the county infirmary, the county hospital, the county tuberculosis hospital and other similar departments or institutions. *Such vehicles, when purchased for such departments, may be used for other county officials, subject to the regulation of the county commissioners.* This has application to the motor vehicles purchased for the use of the county commissioners or the use of any department under their direct control, and is not applicable to the motor vehicles purchased by the county commissioners for the use of the sheriff or sanitary engineer."

After the above excerpt, these conclusions were reached in the opinion:

"1. That the county commissioners may purchase motor vehicles for the use of the sheriff and sanitary engineer or their deputies, such vehicles to be for the use and subject to the regulation of the person for whom purchased;

2. That the county commissioners may purchase motor vehicles for their own use or for the use of any department under their direct control, and such vehicles may be used by other

county officials, subject to the regulation of the county commissioners.”

Were it not for the conclusions expressed in the opinion, I would be inclined to say that notwithstanding the grammatical rule that nouns in apposition are intended to refer to those nearest antecedent thereto, the words “such officials” as used in the last phrase of the first branch of the syllabus, refer to the words “county commissioners” and not the words “the sheriff and sanitary engineer or their deputies.” However, an examination of the conclusions of the opinion discloses that it was apparently intended that the words “such officials” were intended to refer to “the sheriff and sanitary engineer or their deputies.”

You will observe that the request in Opinion 2779, supra, was “what departments are under the direct control of the board of county commissioners for which the commissioners would be authorized to purchase motor vehicles?”, the second paragraph amplifying this request by asking how far the county commissioners “may go in furnishing automobiles to other departments and officers of the county,” such paragraph expressing a “desire for an opinion on the broadness of the term ‘department under their direct control.’”

You do not ask, except by implication, whether or not the use of all vehicles purchased or owned by the county are “subject to the regulation of the county commissioners,” and I therefore find it unnecessary directly to pass upon this question or expressly to overrule Opinion 2779, supra. Be that as it may, I find nothing whatever in Opinion 2779, supra, or in Opinions Nos. 1553 and 1823, Opinions, Attorney General, 1928, Vol. I, pp. 66 and 618 respectively, justifying the conclusion that the mandate of the Legislature, to the effect that all county vehicles must be “plainly and conspicuously lettered as the property of the county” to the end that such vehicles shall not be used for private purposes, may be disregarded.

In connection with Opinion No. 2779, supra, I deem it proper to direct your attention to Opinion No. 1296, Opinions, Attorney General, 1927, Vol. III, p. 2343, in which it was held as follows:

“1. Neither the county children’s home, nor the child welfare board, established under the provisions of Section 3092,

General Code, is a department under the direct control of the county commissioners within the provisions of Section 2412-1, General Code, relating to the purchase of automobiles.

2. Neither the board of trustees of the county children's home, nor the child welfare board may legally purchase an automobile for the use of the visiting agent authorized to be appointed by Section 3099, General Code.

3. The county home, the county tuberculosis hospital, when the county commissioners constitute the board of trustees of said hospital, and other similar institutions, are departments under the direct control of the county commissioners within the provisions of Section 2412-1, General Code."

At page 2351 of the opinion the then Attorney General said:

"I, therefore find it necessary to modify the former opinion of this department reported in Opinions, Attorney General, 1925, page 598, in so far as it holds that the county hospital and the county tuberculosis hospital are included within the phrase 'departments under the direct control of the county commissioners.'

It seems evident that the departments or institutions under the direct control of the county commissioners include the county home, the county tuberculosis hospital, when the county commissioners constitute the board of trustees of said hospital, and other similar departments and institutions."

Your attention is also directed to Section 7200, General Code, which provides in part as follows:

" * * * The county commissioners may also at their discretion purchase, hire or lease automobiles, motorcycles or other conveyances and maintain the same for the use of the county surveyor and his assistants when on official business. *All such machinery, tools, equipment and conveyances owned by the county shall be plainly and conspicuously marked as the property of the county.* * * * " (Emphasis mine.)

In view of the foregoing, and in specific answer to your questions, it is my opinion that under the provisions of Sections 2412-1 and 2412-2, General Code, all county vehicles purchased by county commissioners, or by county commissioners with the approval of a judge of the court of common pleas of such county for the use of the sheriff or sanitary engineer, their deputies or necessary employees or for the use of the board

of county commissioners or any department under their direct control, are required to be plainly and conspicuously lettered as the property of the county.

Respectfully,

THOMAS J. HERBERT,

Attorney General.