

4319.

APPROVAL, BONDS OF CITY OF TOLEDO, LUCAS COUNTY, OHIO, \$75,000.00.

COLUMBUS, OHIO, June 4, 1935.

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

4320.

DEPUTY SHERIFF—PERSONAL EXPENSES NOT PAYABLE UNDER SECTION 7251-1, GENERAL CODE.

SYLLABUS:

The provisions of Section 7251-1, General Code, do not authorize the payment of the personal expenses of a deputy sheriff, from the appropriation made by the county commissioners pursuant to that statute.

COLUMBUS, OHIO, June 6, 1935.

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

GENTLEMEN:—Your recent letter reads as follows:

“You are respectfully requested to furnish this department your written opinion upon the following:

Section 7251-1, General Code, provides that the sheriff of each county shall detail one or more deputies for the work of enforcing the provisions of the Code, and it is provided that the county commissioners of each county shall appropriate such amount of money annually from the road fund of the county as is necessary to pay the compensation and equip such deputy or deputies for service rendered. ●

QUESTION: May this appropriation of the county commissioners cover the personal expenses of such deputies, such as meals and lodging?”

Section 7251-1, General Code, to which you refer is found in Chapter 19, Title IV, of the General Code. A group of sections in the chapter above mentioned relates to traffic regulations and has to do principally with enforcing the law with reference to maximum loads permitted on public highways or streets.

Section 7251, General Code, creates a liability for damages resulting to any street, highway or bridge by reason of such violation. This section also provides a fine for such violation.

Said Section 7251-1, General Code, reads:

“In those counties having forty miles or more of improved inter-county or main market roads the sheriff of each county shall and in all other counties may detail one or more deputies for the work of enforcing the provisions of

this act; and the county commissioners of each county shall appropriate such amount of money, annually, from the road fund of such county as shall be necessary to equip and to compensate such deputy or deputies for services rendered hereunder. The road superintendents and assistant road superintendents of the state highway department and patrolmen of the county highways may be deputized by the sheriff of the counties in which they are employed, as deputy sheriffs, but shall receive no extra compensation."

In Opinions of the Attorney General for 1931, Vol. II, page 780, it was held as disclosed by the third branch of the syllabus:

"3. In providing for a deputy for the purpose of patrolling the roads under Section 7251-1, General Code, a separate and specific appropriation should be made from the county road and bridge fund."

It will be observed by the terms of Section 7251-1, General Code, that the county commissioners shall annually appropriate such amount "as shall be necessary to equip and to compensate such deputy or deputies for services rendered hereunder." The question you propound is whether this appropriation may cover the personal expenses of such deputies, such as meals and lodging.

It is well settled that the compensation of public officers cannot be enlarged, by implication, beyond the terms of the statute. *Debolt vs. Trustees*, 7 O. S. 237; *Clark vs. Commissioners* 58 O. S. 107.

It is stated in 57 Corpus Juris, page 1124:

"A sheriff is entitled to reimbursement for disbursements necessarily made or expenses necessarily incurred by him in the performance of his official duties when, and only when, there is a statute providing for reimbursement and the expenses or disbursements in question are within it." (See authorities cited.)

It will be observed that the provisions of Section 7251-1, General Code, do not refer to reimbursement for expenses incurred by the deputy sheriff but merely state that such deputy shall be equipped and compensated for services rendered.

In the case of *Richardson vs. State, ex rel.* 66 O. S. 108, it was held that under a former statute which allowed expenses in addition to compensation, the term "expenses" did not include items of a personal nature, such as board, feed and shoeing of horses and livery hire.

In the case of *Higgins vs. Commissioners* 62 O. S. 621, it was held that under a statute which allowed "reasonable and necessary expenses actually paid in the discharge of his official duty" a county commissioner could not be allowed personal expenses while attending the sessions of the board.

I have referred to the Richardson and Higgins cases supra to indicate the decision of the Supreme Court of this state in those instances in which statutory authority exists to reimburse a public official or employe for necessary expenses incurred in addition to other compensation allowed him by law. In view of these decisions it is obvious that the provisions of Section 7251-1, General Code, do not authorize the payment of personal expenses of the deputy sheriff.

In the consideration of this as in every other case where a question is presented with respect to the right of a county officer to the payment of compensation by way of salary, expenses or otherwise out of the county treasury it must be emphasized that

such compensation can be legally paid only upon clear statutory authority therefor.

Specifically answering your inquiry it is my opinion that the provisions of Section 7251-1, General Code, do not authorize the payment of the personal expenses of a deputy sheriff, from the appropriation made by the county commissioners pursuant to that statute.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4321.

HOSPITAL REIMBURSEMENT ACT—AFFIDAVIT OF INDIGENCY MAY BE MADE PRIOR TO NINETY DAYS AFTER TERMINATION OF HOSPITAL CASE.

SYLLABUS:

The affidavit of indigency required by virtue of Section 6308-10, General Code, may be made prior to ninety days after the termination of the hospital care.

COLUMBUS, OHIO, June 6, 1935.

HON. FRANK WEST, *Registrar, Bureau of Motor Vehicles, Columbus, Ohio.*

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

“Section 6308-7 of the General Code of Ohio defines ‘indigent patient’ for the purpose of the law providing for the reimbursement to hospitals for care given indigent persons injured in motor vehicle accidents. This definition is further clarified in Opinions of the Attorney General, No. 2332, dated February 28, 1934.

Section 6308-10, Art. 5, requires that the claim for reimbursement for the cost of the care of an indigent patient shall be made in a form which shall show, among other things, ‘the affidavit of the indigent patient, if living’.

Your opinion is respectfully requested as to the following:

Shall such affidavit of indigency be made no sooner than ninety days after the termination of the patient’s care?”

Section 6308-7, General Code, provides the following definition of an indigent patient:

“ * * * ‘Indigent patient’ means a person who has suffered a motor vehicle injury, is received and cared for in a hospital, is unable to pay for the cost of such care and whose account therefor remains unpaid at the expiration of ninety days after the termination of such care; it excludes an employee suffering from a motor vehicle injury with respect to which he is entitled to the benefits of the workmen’s compensation act of this or any other state or country. A person injured by the operating of a motor vehicle shall be deemed unable to pay such charges if it shall appear that, should an action be brought and judgment secured for the amount thereof against him, or against any other per-