

Upon making inquiry of your department in regard to this matter, I am advised that the notice of sale with respect to the Ohio Canal lands abandoned for canal and hydraulic purposes by the acts above referred to, was given in the manner required by section 14023-23, General Code.

In this view and finding as I do that the sale of this property and the transcript of your proceedings relating to such sale are otherwise in compliance with the law, I am approving this sale and your proceedings relating to the same as is evidenced by my approval endorsed upon the transcript and upon the duplicate copy thereof, both of which are herewith returned.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

534.

COMMON PLEAS COURT—WHERE DECISION IN CONFLICT WITH OPINION OF ATTORNEY GENERAL—COURT DECISION PREVAILS IN PARTICULAR COUNTY WHERE SAID COURT HAS JURISDICTION — ADMINISTRATIVE OFFICER OF ONE COUNTY NOT BOUND BY DECISION OF COMMON PLEAS COURT OF ANOTHER COUNTY—MAY ABIDE BY RULING OF BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES, BASED UPON OPINION OF ATTORNEY GENERAL—CONFLICT.

SYLLABUS:

1. *When a decision of the Common Pleas Court is in conflict with an opinion of the Attorney General, said decision prevails in the particular county over which said court has jurisdiction.*

2. *In such case, an administrative officer of one county is not bound by the decision of the Common Pleas Court of another county and may abide by a ruling of the Bureau of Inspection and Supervision of Public Offices, based upon an opinion of the Attorney General which is in conflict with said Common Pleas Court decision.*

COLUMBUS, OHIO, May 2, 1939.

HON. CHARLES D. DILATUSH, *Prosecuting Attorney, Lebanon, Ohio.*

DEAR SIRS This will acknowledge receipt of your request for my opinion, which reads as follows:

“Opinion of the Attorney General No. 2874, rendered June 29, 1934, presents a construction of Section 3019, General Code.

I am enclosing herewith a copy of the decision in the case

of S. W. Huls, Justice of the Peace, etc., Plaintiff, v. Commissioners of Clinton County, Ohio, Defendants, and being Case No. 14763 upon the Docket of the Common Pleas Court of Clinton County, Ohio, which decision is adverse in its entirety to the Opinion of the Attorney General above referred to.

When the question of the allowance of Cost Bills arose this year, I wrote the Department of Inspection and Supervision of Public Offices for instructions, and was informed in part, that—

‘In so far as Justices of Peace and Constables are concerned, the Bureau is guided by Opinion of the Attorney General No. 2874, rendered June 29, 1934. We are familiar with the decision of the Common Pleas Court in Clinton County, which is adverse to this opinion; but until such time as the Attorney General reverses the former opinion, we accept it as binding upon the other Counties of the State.’

It has always been my opinion and understanding that when a new question of law in the State of Ohio was established by a Court of Record in the State of Ohio, even if it be a Court of Common Pleas, the decision of that Court established the law of the State of Ohio and throughout the State of Ohio until at some subsequent time it might be reversed or modified by some higher Court.

For that reason I am writing you to ask specifically — whether or not a prosecuting attorney of this State is required to follow the advice of the Department of Inspection and Supervision of Public Offices, which in turn bases its advice upon an Opinion of the Attorney General, when a later decision of a Court of Common Pleas of the State of Ohio is directly opposed to the Opinion of the Attorney General?”

The general duties assigned to the Bureau of Inspection and Supervision of Public Offices in the Department of the Auditor of State are set forth in section 274, General Code, which reads in part as follows:

“There shall be a bureau of inspection and supervision of public offices in the department of auditor of state which shall have power as hereinafter provided in sections two hundred seventy-five to two hundred eighty-nine, inclusive, to inspect and supervise the accounts and reports of all state offices, including every state educational, benevolent, penal and reformatory institution, public institution and the offices of each taxing district or public institution in the state of Ohio.”

By virtue of the above quoted section and succeeding sections, the Bureau is charged with the duty of inspecting all public offices to de-

termine whether their operations are in accordance with the statutory provisions applicable to each. In the event any public funds are illegally disbursed or any public funds collected have not been duly accounted for in such offices, it is within the province of the Bureau to make a finding against any person involved and to certify the claim for collection. Whenever the Bureau is in doubt with regard to the proper interpretation of a particular statute, it may request and obtain a written opinion from the Attorney General. This advice is rendered under authority of section 341, General Code, which provides as follows:

“The attorney-general, when so requested, shall give legal advice to a state officer, board or commission, the warden or directors of the penitentiary, the superintendent, trustees, or directors of a benevolent or reformatory institution of the state, and the trustees of the Ohio State University, in all matters relating to their official duties.”

The weight and effect ordinarily given to opinions of the Attorney General is adequately discussed in 2 Ruling Case Law, 920, as follows:

“As previously indicated, one of the most important duties of an Attorney General, and at the same time one having its inception in the origin of the office, is that of advising the executive heads of the government. In the discharge of this function he acts in an advisory and ministerial rather than a judicial capacity, his opinion being for the information of the officer to whom it is rendered. While it may be persuasive, it is neither conclusive nor binding, and the recipient is free to follow it or not as he chooses. * * * Although the Opinions of the Attorney General have in no sense the effect of judicial utterances, in actual practice they are usually followed. His duties often affect the rights of all persons within the state, and with the exception of judgments and orders of courts, his opinions control public interests more largely than do the acts of any other official of the state.”

See also 4 Ohio Jur. 386; 5 Am. Jur. 243; *Leddy v. Cornell*, Ann. Cas. 1913-C, 1304 and note; *State v. District Court*, Ann. Cas. 1912-D, 935 at 941.

Under ordinary circumstances, the officer, board or commission to which an opinion is rendered follows it without question in view of the fact that it is the advice of the chief legal officer of the state. However, when a court of competent jurisdiction has rendered a decision which is in conflict with an opinion of the Attorney General, as is true in the instant case, it must be determined which authority the public official in question

should follow. A problem very similar to the one presented in your letter was considered in Opinion 397 of the Opinions of Attorney General for 1927, page 689, the syllabus of which reads as follows:

“Administrative officers in the performance of their official duties should act in accordance with the orders of a court, even though such orders may not be in accord with the opinion of the Attorney General and even though the court’s decision may have been made in the discharge of an administrative duty rather than in its strictly judicial capacity.”

See also Opinion No. 2304 of the Opinions of the Attorney General for 1928, page 1648, the syllabus of which reads as follows:

“The Bureau of Inspection and Supervision of Public Offices is without jurisdiction or authority to make a finding contrary to or inconsistent with the judgment, degree or order of a court of competent jurisdiction.”

The following language pertinent to your inquiry appears in the body of the 1927 opinion, at page 689:

“Courts are by the law made such final arbiters, and when the law is interpreted by a court the interpretation given to it by the court becomes the law within the jurisdiction of the court, and, such interpretation as the court gives to the law should be followed and acted upon, at least within the territory over which such court has jurisdiction.”

I am in accord with the thoughts expressed by the then Attorney General to the effect that the interpretation of a statute by a court of competent jurisdiction should be followed within the territory over which such court has jurisdiction. In the instant case, the Common Pleas Court of Clinton County has rendered a decision which conflicts with a 1934 opinion of the Attorney General rendered to the Bureau of Inspection and Supervision of Public Offices. The jurisdictional limits of the Common Pleas Court of Clinton County are identical to physical boundaries of said county. Within Clinton County that decision is the law until such time as it may be overruled by a higher court. Outside of said county that decision affords only argumentative value to those in accord with the views contained therein. Neither you as prosecuting attorney of Warren County, nor the Bureau of Inspection and Supervision of Public Offices, except in cases arising within Clinton County, are compelled to abide by the decision of the Common Pleas Court of Clinton County.

In specific answer to your inquiry, I am of the opinion that a prose-

cuting attorney of one county is not bound by a decision of a common pleas court of another county, and may, therefore, follow a ruling of the Bureau of Inspection and Supervision of Public Offices based upon an opinion of the Attorney General which is in conflict with said Common Pleas Court decision.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

535.

BOND—WILLIAM S. HINDMAN, ACTING DEPUTY DIRECTOR, BUREAU OF BRIDGES, DEPARTMENT OF HIGHWAYS, \$5,000.00.

COLUMBUS, OHIO, May 3, 1939.

HON. ROBERT S. BEIGHTLER, *Director, Department of Highways, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval, the bond of William S. Hindman, in the sum of \$5,000.00, with the Glens Falls Indemnity Company of New York as surety and covering Mr. Hindman in the position of Acting Deputy Director of the Bureau of Bridges, Department of Highways.

Finding said bond in proper legal form, I have noted my approval thereon, and same is transmitted herewith to you.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

536.

BONDS—CITY OF TOLEDO, LUCAS COUNTY, \$5,000.00

COLUMBUS, OHIO, May 5, 1939

Retirement Board, Public Employes' Retirement System, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of the City of Toledo, Lucas County, Ohio,
\$5,000.00 (Unlimited).

The above purchase of bonds appears to be part of a \$2,300,000.00 issue of Bridge Bonds of the above city dated May 1, 1929. The tran-