

or certificates of any individual State chartered building and loan association organized under the laws of the State of Ohio, which has no insurance of accounts.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1038.

PROSECUTING ATTORNEY—EMERGENCY—EXTRA STENOGRAPHIC WORK—CIVIL OR CRIMINAL MATTERS—PURCHASE BOOKS—OFFICE USE, PERFORMANCE OF OFFICIAL DUTIES—MAY USE FUNDS PROVIDED IN SECTION 3004, G. C.

SYLLABUS:

1. *The prosecuting attorney may use the funds provided in Section 3004, General Code, to pay extra stenographic help needed to meet emergencies due to unusual work in civil or criminal matters.*

2. *The prosecuting attorney may legally use the funds provided in Section 3004, General Code, for the purchase of books for use in his office in the performance of his official duties.*

COLUMBUS, OHIO, August 15, 1939.

HON. ELLIS W. KERR, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR: I have your recent request for my opinion, in which you inquire as to whether or not funds provided Prosecuting Attorney by Section 3004 of the General Code may be used to pay extra stenographic help needed to meet emergencies or due to the unusual work in civil or criminal matters, which work could not possibly be handled by the regular stenographic staff, and whether or not such funds may also be used to purchase a set of Ohio reference books or text books which the Prosecuting Attorney needs for research in compiling official opinions and advising those officers whom he represents, where no other appropriation for the purchase of such books has been made.

Your inquiry necessitates a consideration of Sections 2914, 2915 and 3004 of the General Code.

Section 2914, General Code, provides:

“On or before the first Monday in January of each year in each county, the judge of the court of common pleas, or if there be more than one judge, the judges of such court in joint session, may fix an aggregate sum to be expended for the incom-

ing year, for the compensation of assistants, clerks and stenographers of the prosecuting attorney's office.

Section 2915, General Code, provides :

"The prosecuting attorney may appoint such assistants, clerks and stenographers as he deems necessary for the proper performance of the duties of his office, and fix their compensation, not to exceed in the aggregate the amount fixed by the judge or judges of the court of common pleas. Such compensation after being so fixed shall be paid to such assistants, clerks and stenographers monthly from the general fund of the county treasury upon the warrant of the county auditor."

The "aggregate sum" referred to in Section 2914 is the amount that the court believes will be sufficient to take care of the business in the prosecutor's office for the ensuing year. Obviously it is limited to the estimated expenses which are usually incurred during such period. A court would have to be endowed with supernatural intuition to anticipate all the unusual types or the extraordinary volume of business that a prosecutor will be called upon to transact during a year.

To enable the prosecutor to carry out the duties of his office, the Legislature, in 1911, passed Section 3004 of the General Code to supplement the funds available for the prosecutor under the provisions of Section 2914, which was passed in 1904. The pertinent part of Section 3004 reads :

"There shall be allowed annually to the prosecuting attorney in addition to his salary and to the allowance provided by section 2914, an amount equal to one-half 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, not otherwise provided for. 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 persons as the order designates, for such amount as the order requires not exceeding the amount provided for herein, and to be paid out of the general fund of the county.

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

1911, such fund shall be proportioned to the part of the year remaining after this act shall have become a law.”

This statute provides that these additional funds be used by the prosecutor in (a) “performance of his official duties in the furtherance of justice,” and (b) for expenditures “not otherwise provided for.” The unexpended balance shall be returned to the county treasury during the month of January of the year after it was appropriated.

I am not unmindful that these statutes received careful examination by a former Attorney General in an opinion found in Opinions of the Attorney General for 1933, Vol. 2, page 1143, No. 1175. The syllabus of that opinion reads:

“Where the judge or judges of the common pleas court of a county have fixed the aggregate amount to be expended by the prosecuting attorney for assistants, clerks and stenographers, the prosecuting attorney may not pay out of the funds received by him, under the provisions of sections 3004 and 3004-1, General Code, an additional amount to his assistants and stenographers.”

See also Opinions of the Attorney General for 1914, page 1160; 1916, Vol. 1, page 118; 1917, Vol. 1, page 478; 1918, Vol. 1, page 256; and 1919, Vol. 1, page 597. However, the conclusions reached in the foregoing opinions do not determine the issues presented in your letter.

The first sentence of Opinion 1175 (1933, Vol. 2, p. 1143) reads:

“I assume that you refer to the assistants, clerks and stenographers who are in the regular employment of a prosecuting attorney.”

Your request is directed to the employment of extra stenographic help, which is not included in “regular employment” by the county prosecutor. This distinction is significant.

You state in your letter that it is contended that because Sections 2914 and 2915 provide for stenographers, the prosecutor may not use the money available under Section 3004 to employ extra stenographic help. This position is not entirely logical. The duties of the prosecutor are many and varied, and increase with each session of the Legislature. Under Section 2916 he has the duty to inquire into the commission of crimes and prosecute the same, and appear in all controversies and complaints in which the state is a party; Section 2917 makes him the legal adviser of county and township officers and of the board of elections; Section 2920 imposes upon him the duty to prepare official bonds for county officers and see to it that they are properly signed and deposited with the proper officer; under Section 2921 he is made responsible for the proper

expenditure of public moneys in his county. There are several statutes which grant additional help to the prosecutor; Section 1547 provides for additional shorthand reporters. It is obvious that extra stenographic help may be needed by the prosecutor outside of actual court room work to prevent serious delay in matters which were not anticipated or for which insufficient provision was made in the annual estimate set out in Section 2914.

A former Attorney General, considering these specific circumstances, wrote (*Opinions of Attorney General, 1929, Vol. 3, page 1674*):

“There is no limitation on how the prosecutor may expend the funds allowed to him by virtue of Section 3004, General Code, except that it be in the performance of his official duties and in the furtherance of justice, and he, himself, is the judge of the necessity of the expenditure of those funds for the purposes mentioned. If, in the opinion of the prosecutor, any expenditure from those funds is in the performance of his official duties and in the furtherance of justice, it is almost impossible for anyone to say, as a matter of law, that the expenditures are illegal.”

To limit the prosecutor's expenditures for stenographers to the amount specified in the aggregate sum (Section 2914) would tend to defeat the purpose of Section 3004, which was passed to provide funds for services not included in the estimates of Sections 2914 and 2915.

Therefore, I am of the opinion that the Prosecuting Attorney may use the funds provided in Section 3004 to pay extra stenographic help needed to meet emergencies due to the unusual work in civil or criminal matters.

Your second inquiry refers to the purchase of law books and involves an interpretation of Section 3004 of the General Code, to determine when and how the prosecutor may spend money allowed under this section. Your letter states that the purchase of books from this fund by the prosecutor has been questioned “because law books are provided elsewhere in the county Court House.” Obviously the prosecutor needs law books in the performance of his official duties and in the furtherance of justice, and it would follow that these books must be available for his immediate use and purpose. The statute gives the prosecutor funds to spend “under his order”; the discretion rests with him. He is entitled to an amount equal to one-half of his salary and is required to return the unexpended balance.

Therefore, I am of the opinion that if the county prosecutor, in the performance of his official duties, desires to purchase books for use in his office from the funds provided in Section 3004, he may legally do so.

Respectfully,

THOMAS J. HERBERT,
Attorney General.