

deputies should act for the clerk in the township in which he was appointed, in the matter of issuing hunters' and trappers' licenses.

This inference is strengthened by a consideration of the fact that since the position and duties of a deputy township clerk appointed by authority of Section 1432, supra, are created by statute, he is necessarily limited in his powers to such as are prescribed by law and to those necessary to carry the prescribed powers into effect. There is nothing in said section which could be construed to authorize, either directly or impliedly, an extension of the powers of a deputy township clerk to a county or state wide jurisdiction.

In view of the foregoing, I am of the opinion that a deputy township clerk, appointed under the provisions of Section 1432, General Code, may not issue and sell hunters' licenses outside of the township in which he was appointed.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3728.

COUNTY EDUCATIONAL EQUALIZATION FUND—DEFINITION—ONLY
TEACHERS WHO RECEIVE \$800 PER YEAR OR MORE MAY SHARE.

SYLLABUS:

1. *That portion of the 2.65 mills tax levy authorized by Section 7575, General Code, which is collected from territory of a county outside of city and exempted village school districts, constitutes a fund within the county board of education fund and is known as the "county educational equalization fund."*

2. *The county educational equalization fund in each county should be apportioned by the county board of education to the several school districts or parts of districts within the county which lie outside of city and exempted village districts, in such manner as is directed by Section 7600, General Code.*

3. *In apportioning that portion of the county educational equalization fund which is attributable to teachers and educational employes, as directed by Section 7600, General Code, no teacher or educational employe who does not receive a salary of \$800.00 per year or more, may be considered.*

COLUMBUS, OHIO, November 3, 1931.

HON. B. O. SKINNER, *Director of Education, Columbus, Ohio.*

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

"One provision of Section 7600, G. C., is that thirty-seven and one-half per centum of the salary of each teacher or educational employe receiving a salary of not less than \$800 shall be distributed from the 2.65 mills county equalization levy.

A teacher has been employed at a salary below \$800.00. Is it illegal to allow thirty-seven and one-half per centum of a salary less than \$800.00 from the 2.65 mills levy?"

Your inquiry relates to the apportionment and distribution of the 2.65 mills tax levy, which levy is authorized by Section 7575 of the General Code. The portion of this levy which inures to school districts other than city and exempted village districts is known in each county as the "county educational equalization fund" for such county. Its apportionment and distribution to the several school districts is regulated entirely by statute, and no authority exists for its distribution other than that provided by statute. The statute with reference thereto, is Section 7600 of the General Code, which reads in part, as follows:

"After each semi-annual settlement with the county treasurer each county auditor shall immediately apportion school funds for his county. Each city school district and each exempted village school district shall receive the full amount of the proceeds of the levy of two and sixty-five hundredths mills provided in section 7575, General Code, in the given school district. The proceeds of such levy upon property in the territory of the county outside of city and exempted village school districts shall be placed in the 'county board of education fund' and shall be known as a 'county educational equalization fund.'

* * * *

The proceeds of the county educational equalization fund shall be apportioned by the county board of education to each school district and part of district within the county outside of city and exempted village school districts on the basis of * * * the number of teachers and other educational employes employed therein, and the expense of transporting pupils * * *

The annual distribution attributable to teachers and employes shall be according to the following schedule: thirty-seven and one-half per centum of the salary of each teacher or educational employe receiving a salary of not less than eight hundred dollars and a like percentage of the compensation paid to each person giving instruction in trade or technical schools, extension schools, night schools, summer schools and other special school activities, but not to exceed nine hundred dollars for any teacher or educational employe or other such person. * * * Provided that the amount distributed to each district shall be upon the basis of the same salary schedule as determined by the county board of education, but in no case shall the amount paid per teacher or educational employe be less than three hundred dollars or more than nine hundred dollars. * *"

The purpose of the law, apparently, is to discourage the payment to teachers of salaries less than \$800.00 per year, by providing that those districts where salaries of less than \$800.00 per year are paid, shall not be permitted to participate in the distribution of the 2.65 mills tax levy which is made for the purpose of equalizing educational advantages among the several districts of a county school district.

The language of the statute is quite clear to the effect that distribution of a portion of the said levy shall be made to districts on the basis of the number of teachers and educational employes, providing those employes receive a salary of not less than \$800.00 per year, and does not contain any authority to distribute a portion of these funds to districts on the basis of the number of teachers and educational employes unless they do receive salaries of not less than Eight Hundred Dollars per year each. No other construction of the language of this statute

is possible, in my opinion, than that it expresses a clear legislative intent that teachers and educational employes in a school district, who receive a salary of less than Eight Hundred Dollars per year, shall not be considered in the distribution of that portion of the proceeds of the 2.65 mills tax levy which the statute provides shall be attributable to teachers and educational employes.

Moreover, this construction is fortified by the further provision that the amount distributed to each district shall be upon the basis of the same salary schedule as determined by the county board of education, but in no case shall the amount paid per teacher or educational employe be less than Three Hundred Dollars.

Three Hundred Dollars is thirty-seven and one-half per cent of Eight Hundred Dollars. This fact conclusively shows that the legislature did not intend the salary schedule, to be adopted by a county board of education, to provide for salaries of less than Eight Hundred Dollars per year, else the teachers and educational employes receiving such lesser salaries were not to be counted in the distribution of that portion of the fund attributable to teachers and educational employes.

This provision of the statute with reference to the distribution of these funds was first inserted in the statute in 1920. It was contained in House Bill 615, of the 83rd General Assembly. The language of the statute as then enacted, was substantially the same as that contained in the present statute, with the exception that the per centum of the salaries of teachers and educational employes, which was made the basis of the distribution of that portion of the fund attributable to teachers and educational employes, was twenty-five instead of thirty-seven and a half. Soon after the enactment of this provision in 1920, there was submitted to the then Attorney General for his consideration, the following question:

"Must boards of education pay the minimum salary of \$800 as provided by House Bill 615, from the beginning of the term in 1920 in order that they may receive a part of the state and county common school funds for teachers' salaries as further provided in said bill, or can boards wait until they receive their first allotment under said House Bill 615, in February, 1921, before raising salaries to the minimum of \$800?"

In reply thereto, the Attorney General said:

"Boards of education must have provided for the payment of the minimum salary of eight hundred dollars for the entire incoming year in order that such salary shall enter into the basis of distribution of the school funds to their respective districts; * *"

In the course of the opinion the Attorney General said:

"* * it may be given as the opinion of this department that the salary as fixed prior to the first day of August determines the basis of the distribution, and if the salary of any such position is less than the minimum of eight hundred dollars no distribution accrues to that district on the basis of the salary so paid."

See Opinions of the Attorney General for 1920, page 394.

I am therefore of the opinion, in specific answer to your question, that there is no authority for the distribution of any part of the proceeds of the 2.65 mills tax levy authorized by Section 7575, General Code, to school districts outside city and exempted village districts on the basis of teachers and educational employes as provided by Section 7600, General Code, unless those teachers and educational employes receive a salary of \$800.00 or more per year, and that in making such distribution those teachers and educational employes only who receive a salary of more than \$800.00 per year, may be considered.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3729.

SALARY—SECRET SERVICE OFFICER—COUNTY AUDITOR UNAUTHORIZED TO ISSUE WARRANT FOR SUCH WHERE NO APPROPRIATION BY COUNTY COMMISSIONERS—MAY BE PAID FROM PROSECUTING ATTORNEY'S FUND.

SYLLABUS:

The salary of a secret service officer appointed under section 2915-1, General Code, cannot be paid out of the general fund of the county on the warrant of the county auditor when there has been no appropriation made for his salary by the county commissioners. However, if there is any balance in the prosecuting attorney's 3004, General Code fund, said secret service officer's salary may be paid therefrom, without a specific appropriation from the county commissioners.

COLUMBUS, OHIO, November 3, 1931.

HON. J. R. B. KESSLER, *Prosecuting Attorney, West Union, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication which reads as follows:

"I appointed a secret service man for my office under Section 2915-1 and he has rendered service for one month and is entitled to \$125.00 as fixed by the Common Pleas Judge. The county commissioners have not made any appropriation for its payment and refuse to do so. Can this be paid out of the general fund of the county without an appropriation by the Commissioners, on a warrant of the County Auditor? He does not care to be at the expense of a suit against the commissioners for its recovery. It might be that the commissioners would take action if so advised by you. Please advise me in relation to the matter."

Article X, Section 5, Ohio Constitution, provides as follows:

"No money shall be drawn from any county or township treasury, except by authority of law."