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BOARD OF COUNTY COMMISSIONERS—UNDER SECTION 2489 G. C. OBLIGED TO PAY REWARD WHEN OFFERED FOR APPREHENSION OF GUILTY PARTY, IF PERSON OTHERWISE ENTITLED TO REWARD —NOT NECESSARY TO ADVERTISE IN NEWSPAPER OR BILLS.

SYLLABUS:

A board of county commissioners is obliged to pay a reward offered by it under the provisions of Section 2489, General Code, to a person who thereafter either apprehends or furnishes information causing the apprehension and conviction of the guilty parties, although the resolution has not at the time been advertised in a newspaper or hand bills, provided such person was not an officer whose duty it was to perform such service, and provided he be otherwise legally entitled thereto.

COLUMBUS, OHIO, March 22, 1927.

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

DEAR SIR:—Receipt is acknowledged of your letter of recent date, reading as follows:

> "On the night of March 21, 1926, J. A. Benge, night-watchman of the village of Franklin, Warren county, Ohio, was murdered while in the performance of his duties.
>
> The following day the Board of County Commissioners of Warren county, Ohio, passed a resolution, offering a reward of five hundred dollars, under the provisions of Section 2489 G. C., for the apprehension, arrest and conviction of the person or persons guilty of this crime. This reward was advertised in the newspapers and by the circulation of hand bills.
>
> No information being forthcoming, on June 7, 1926, the Board of County Commissioners passed a second resolution, duly entered in their journal, increasing this reward to one thousand dollars. and the sheriff was notified to advertise this increase accordingly.
>
> On the 11th day of June, the guilty parties were apprehended and arrested, before notice of the increase of this reward had been advertised.
>
> Two parties now claim this reward; each claim they knew of the increase in the reward from five hundred dollars to one thousand dollars, and I am respectfully requesting the opinion of your department as to whether or not the Board 'speaks by its journal' and therefore owes a reward of one thousand dollars, or due to the fact that only a five hundred dollar reward was advertised, it should only pay five hundred dollars."

The legislature of Ohio has specifically given the boards of county commissioners authority, when they deem it expedient, to offer a reward for the detection and apprehension of persons charged with or convicted of a felony.

Section 2489, General Code of Ohio, reads as follows:

> "When they deem it expedient, the county commissioners may offer such rewards as in their judgment the nature of the case requires, for the detection or apprehension of any person charged with or convicted of felony, and on the conviction of such person, pay it from the county treasury, together with all other necessary expenses, not otherwise provided for by law, incurred in making such detection or apprehension. When they deem it expedient, on the collection of a cognizance given and forfeited by such per-

son, the commissioners may pay the reward so offered, or any part thereof, together with all other necessary expenses so incurred and not otherwise provided for by law."

From the contents of your letter it is manifest that the board of county commissioners of Warren county acted under the provisions of the above statute and passed the resolution offering the reward in the sum of $1,000.00. That offer of a reward was impliedly addressed to any person or persons whose efforts would result in the detection, apprehension and conviction of the murderer of J. A. Benge. The resolution was duly passed June 7, 1926, and was entered in the record of the proceedings of the board, as provided by section 2406, General Code. While the sheriff was notified to advertise the increase in the reward offered, such publication was unnecessary. In fact, to have done so after the guilty parties were apprehended would have been fruitless and an unnecessary expenditure of public money. The statute, Section 2489, General Code, above quoted, does not provide that the resolution shall be advertised in a newspaper or hand bills in order to create a liability for services rendered, pursuant to the object and purpose of the resolution.

As disclosed in your letter, the two persons who now seek the reward claim that they knew of the increased offer by the board on June 7, 1926, and we assume that with knowledge thereof they either pursued and arrested or gave the information that led to the arrest of the guilty parties on June 11, 1926, before the sheriff published the resolution. However, your letter does not say that it is conceded that the persons claiming the reward knew of the adoption of the resolution before the apprehension of the guilty persons on June 11, 1926.

I desire to suggest to you that if it be a fact that the parties did not know of the resolution on June 11th, there are some state cases that hold there is no legal obligation to pay an offered reward unless its existence was known to the claimants before performing the service. Other state Supreme Courts hold that persons who perform the services are entitled to the reward, although they did not know of the offer at the time. I am unable to find a case in Ohio deciding this question either way. I think it highly important that the legislature, in the enacting of Section 2489, General Code, in effect delegated its authority to a subordinate administrative body and in that sense the government, as distinguished from an individual citizen, under the statute offers the reward. And I am inclined to the opinion, therefore, that persons may lawfully recover the reward, although they did not know of the offer at the time, if they be legally entitled to it otherwise.

In the case of *Auditor* vs. *Ballard*, 72 Ky., 572 (15 Am. Rep. 728), the court, among other things, says:

> "But it is said that the appellee is not entitled to the reward because he did not know at the time he arrested the fugitive and delivered him to the jailer, that one had been offered, and therefore the services could not have been performed in consideration of the reward. If the offer was made in good faith, why should the state inquire whether appellee knew that it has been made? Would the benefit to the state be diminished by a discovery of the fact that the appellee, instead of acting from mercenary motives, had been actuated solely by a desire to prevent the escape of a fug tive and to bring a felon to trial? And is it not well that all may know that whoever in the community has it in his power to prevent the final escape of a fug.tive from justice and does prevent it, not only performs a virtuous service but will entitle himself to such reward as may be offered therefor?"

See Bishop on Contract (2nd Ed.) Section 331; Smith vs. Nevada, 38 Nev., 477

(L. R. A. 1916a, p. 1276); Everman vs. Hyman, 26 Ind. App., 165; 84 Am. St. Rep., 284, Russell vs. Stewart, 44 Vt., 170.

The following cases express the opposite view:

Smith vs. Vernon Co. 188 Mo. 501, (70 L. R. A. 59); Hoggard vs. Dickerson, 180 Mo. App. 70, (165 S. W., page 1135); Broadnax vs. Ledbetter, 100 Tex. 375 (9 L. R. A. N. S. 1057); Sheldon vs. George, 116 N. Y. Sup. 969.

In any event since you state that the parties claiming the reward "knew of the increase," it is probable that they could establish the fact that they did have such knowledge, and it is unnecessary specifically to determine this question, unless it should be developed that the claimants, did not in fact have knowledge of the increase.

I desire to point out to you, however, that before the board could lawfully pay the reward, there are two important factors it should determine as facts, viz., (1) that the efforts of the persons you mention, one or both, led to the detection, apprehension and conviction of the murderer of Benge, and (2) that they are not public officers whose duties, as such, were to apprehend the guilty parties.

I call attention to the law on the subject as expressed by Judge Wood, in the case of *Gilmore* vs. *Lewis*, 12 Ohio, p. 281, wherein, at page 286, among other things, he said:

> "No doubt is entertained by us, as a general rule, that the detection, arrest and conviction of a felon, or the discovery and seizure, or return, of stolen property, is a good consideration to sustain a promise made on such condition. When the condition is complied with, he who performs it becomes the promisee; the contract is then complete and executed on his part; the legal interest is vested in him and he has the right to claim the reward, as the benefit of his exertion, * * * and an offered reward is, frequently, the only hope of remuneration for the meritorious service rendered to the commonwealth."

Judge Wood, in the case supra, points out that public officers, upon whom the law casts its duty, from whom it requires exertion and to whom it affords adequate compensation, occupy a different ground and cannot lawfully claim the reward. This was also held in *Banks* vs. *Edmond*, 76 O. S., 396, and *Brown* vs. *Commissioners* 2, O. C. C. (N. S.) 381.

Answering your question specifically, I am of the opinion that the mere fact that the resolution had not been advertised by the sheriff at the time the parties claiming the reward either apprehended or by their efforts and information caused the apprehension and conviction of the guilty parties, would not relieve the board of the obligation to pay the one thousand dollars reward.

Respectfully,
EDWARD C. TURNER,
Attorney General.

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APPROVAL, BONDS OF VILLAGE OF DEGRAFF, LOGAN COUNTY, OHIO—$6.000.00.

COLUMBUS, OHIO, March 22, 1927.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.