

(115 O. L. 93), 90th General Assembly, regular session, are principals and the New York Casualty Company is surety.

Said bond is entered into pursuant to the provisions of section 1181-2, General Code (section 2 of H. B. 270), which reads so far as pertinent as follows:

“* * *

* * *

* * *

Each highway patrolman upon his appointment and before entering upon his duties shall * * * execute a bond in the sum of twenty-five hundred (\$2500.00) dollars payable to the state and for the use and benefit of any aggrieved party who may have a cause of action against any such patrolman for misconduct while in the performance of his duties. * * *

Finding said bond in proper legal form, in accordance with the foregoing statutory provision, I hereby approve said bond and am returning the same to you herewith.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2246.

APPROVAL—NOTES OF BEXLEY CITY SCHOOL DISTRICT, FRANKLIN COUNTY, OHIO—\$30,000.00.

COLUMBUS, OHIO, February 1, 1934.

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

2247.

CHILDREN'S HOME—COMPENSATION OF SUPERINTENDENT AND MATRON FIXED BY BOARD OF TRUSTEES—COUNTY COMMISSIONERS REQUIRED TO APPROPRIATE FULL AMOUNT SO FIXED.

COLUMBUS, OHIO, February 1, 1934.

SYLLABUS:

It is the duty of a board of county commissioners to appropriate from county funds the full amount of compensation for the superintendent and matron of a children's home as fixed by the board of trustees of the home.

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

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

“Under the provisions of Section 3084 of the General Code, the trustees of the Children’s Home are authorized to designate a suitable person to act as superintendent of the Home, who shall receive for his services such compensation as the board of trustees designates at the time of his appointment.

Section 3085 of the General Code, authorizes the superintendent upon approval of the board of trustees, to appoint a matron, which matron is to receive such compensation as the trustees may provide.

QUESTION: May the county commissioners, in making their appropriation for the Home provide for an amount less than that fixed by the board of trustees for the salaries of the superintendent and matron; or is it the duty of the county commissioners to appropriate the amount fixed by the board of trustees of the Home for such purpose?”

By force of Sections 3077 et seq. of the General Code of Ohio, the commissioners of a county may establish a children’s home for such county. Section 3081, General Code, provides for the appointment of a board of trustees to administer the affairs of a children’s home when established. Section 3084, General Code, provides in part:

“The board of trustees shall designate a suitable person to act as superintendent of the home, who shall also be clerk of such board, and who shall receive for his services such compensation as the board of trustees designates at the time of his appointment.* * *”

Section 3085, General Code, provides in part:

“* * * Upon the approval of the trustees the superintendent may appoint a matron, assistant matrons, and other necessary employes * *. Under the direction of the superintendent, the matron shall have the control, general management and supervision of the household duties of the home, and the matron, assistant matrons, and other employes shall perform such other duties and receive for their services such compensation as the trustees may by by-laws from time to time direct. * * *”

From the foregoing statutes it clearly appears that the compensation of the superintendent and of the matron of a county children’s home is fixed by the board of trustees of such home. The county commissioners have nothing to do with the matter except to appropriate funds from which the compensation as fixed by the board of trustees is to be paid.

It has been held in a number of cases that where the compensation of an officer or of an employe is fixed by law or fixed in the manner provided by law, it is the duty of the proper appropriating authority to appropriate funds to pay this compensation. In the case of *State ex rel. Miller vs. Massillon*, 2 O. C. C. (N. S.) 167, a writ of mandamus was issued to compel the council of the city of Massillon to make an appropriation to meet the added expense of an increase in salary of a health officer where it appeared that the health officer was legally employed and that the board of health, which was empowered by law to fix the compensation of the health officer had legally made the increase in salary. The writ in this case was issued in the absence of a certificate from the proper officer that there were funds on hand for the

payment of the services of the officer at the time the salary was increased.

In the case of *State ex rel. vs. Thomas, Auditor*, 35 O. App., 250, the question arose as to the duty of a board of county commissioners to appropriate money for the payment of the salary of a duly appointed criminal bailiff and court constable, whose salary had been fixed by the Court of Common Pleas by virtue of Sections 1541, 1692 and 1693, General Code. In the course of the court's opinion by Judge Hornbeck, it was said:

"When the common pleas court judge appoints a court constable and criminal bailiff and fixes the compensation, as he is expressly authorized to do under Sections 1541, 1692 and 1693, General Code, it has been fixed by a person or tribunal authorized so to do, and it is an act equivalent to and on parity with a fixing by law.

The county commissioners are bound to accept this act of a common pleas court judge, who is authorized to fix the compensation by law, in the same manner as if it had been fixed by statutory enactment."

In the case of *Jenkins, Auditor, vs. State ex rel.*, 40 O. App. 412, a writ of mandamus was issued, directing a board of county commissioners to appropriate for the use of a county agricultural society, the sum of money which the law directs such a society may receive from the county treasury. (Section 9894, General Code.) It was there said by the court:

"In preparing an appropriation measure under Section 5625-29, General Code, the taxing authority is bound to provide first for all those expenditures made imperative by statute."

See also 81. A. L. R., page 1253, note.

I am therefore of the opinion in specific answer to your question that it is the duty of a board of county commissioners to appropriate from county funds the full amount of compensation for the superintendent and matron of a children's home as fixed by the board of trustees of the home.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2248.

APPROVAL, NOTES OF CLEARCREEK TOWNSHIP RURAL SCHOOL
DISTRICT, FAIRFIELD COUNTY, OHIO—\$2,500.00

COLUMBUS, OHIO, February 1, 1934.

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