

4933.

COUNTY VISITORS BOARD—LIMITATION OF EXPENSES OF SUCH BOARD.

SYLLABUS:

The limitation of one hundred dollars for expenses of a board of county visitors in any year contained in Section 2973, General Code, is a limitation upon the total expenses of such board and its members for such period of time.

COLUMBUS, OHIO, November 23, 1935.

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

GENTLEMEN:—Your letter of recent date is as follows:

“Section 2973, General Code, provides:

“The board of county visitors shall serve without compensation, but actual expenses incurred in the discharge of its duties and actual necessary expenses incurred by any member or members to be selected by such board in visiting any other charitable or correctional institution for the purpose of information, and in attendance upon any convention or meeting held within this state in the interest of and to deliberate upon charitable or correctional methods and work to an amount not to exceed one hundred dollars in any year, shall be allowed by the county commissioners. * * .”

QUESTION: Is the one hundred dollars a limitation upon the total expenses of the board and its members in any one year; or may each member be paid not to exceed one hundred dollars for expenses incurred in any one year?”

It is, of course, well established as a principle of statutory construction that in determining whether or not authority exists to expend public funds for any given purpose, in case of doubt the question must be resolved against the expenditure and in favor of the public.

The portion of Section 2973, General Code, which you quote with respect to limiting the allowance for expenses of a board of county visitors, is on its face somewhat ambiguous. Were this a question of first instance, however, there would be justification for giving serious consideration to the construction of the statute based upon the principle that ordinarily qualifying clauses must be construed as applying only to that which immediately precedes them. Such a construction would lead to the conclusion that the one hundred dollars limitation qualifies not “actual expenses incurred in the discharge of its (the board of county visitors) duties”, but only “actual necessary expenses

incurred by any member or members to be selected by such board" in going outside of the county and attending conventions within the state. It should be here stated that I find no authority for construing this section of the General Code as placing a one hundred dollar limitation on the expenses of each member of the board.

The section under consideration was enacted in its present form in 1906. Authority for the appointment of a board of visitors to inspect charitable institutions within the county was first conferred by law enacted in April, 1882, at which time no provision was made for the allowance of any expenses. It was not until 1898 that an amendment of this law contained provision for an allowance for actual expenses incurred by this board in the discharge of its duties. This provision then contained in the law read as follows:

"Said board of county visitors shall serve without compensation, but actual expenses incurred in the discharge of its duties to an amount not exceeding fifty dollars per annum shall be allowed by the county commissioners, and the county auditor shall issue his warrant for the amount, which shall be paid by the county treasurer."

This office considered the provisions of Section 2973, General Code, with respect to the allowance of expenses of the board of county visitors in an opinion appearing in *Opinions of the Attorney General for 1920*, Vol. II, page 1041. The specific question therein passed upon is not in point here, but it was recognized in the body of the opinion that the limitation of one hundred dollars for expenses in any year contained in this section was a limitation on the entire expenses which may be allowed by the county for the activities of a board of county visitors. In speaking of the amendment of this law of 1906, the then Attorney General said at page 1043:

"This amendment of the law leaves it practically the same as now found after codification. Clearly, the expense allowed the board of one hundred per annum was intended to mean an expenditure of one hundred dollars from May 1st to May 1st, so that the phrase 'in any year' as now found in the law was intended to apply to the official year of the members of the board, i. e., from May 1st to May 1st in any year."

I am advised that for many years in administrative practice this statute has been construed as placing a one hundred dollars annual limitation on the amount which may be allowed by the county for any and all expenses of the board of county visitors. It is a well established rule that administrative interpretation of a law, if long continued, while not conclusive, is nevertheless to

be reckoned with most seriously and not disregarded and set aside unless judicial construction makes it imperative so to do. *State, ex rel. vs. Brown*, 121 O. S., 73; *Industrial Commission vs. Brown*, 92 O. S. 309; L. R. A. 1916B, 1277; 25 R. C. L. 1043; *Opinions of Attorney General*, 1932, Vol. I, page 337. In that instant case, I do not find that judicial construction requires a variation from this administrative interpretation of Section 2973, General Code, which interpretation appears to have been recognized in the opinion of this office rendered in 1920, *supra*.

It is accordingly my opinion, in specific answer to your question, that the limitation of one hundred dollars for expenses of a board of county visitors in any year contained in Section 2973, General Code, is a limitation upon the total expenses of such board and its members for such period of time.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4934.

APPROVAL, BONDS OF CITY OF TORONTO, JEFFERSON
COUNTY, OHIO, \$7,000.00.

COLUMBUS, OHIO, November 23, 1935.

State Employes Retirement Board, Columbus, Ohio.

4935.

APPROVAL, BONDS OF VILLAGE OF DRESDEN, MUSKINGUM
COUNTY, OHIO, \$24,000.00 (UNLIMITED).

COLUMBUS, OHIO, November 23, 1935.

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