

such sum of money is to be used to purchase revenue stamps for deeds or other instruments of transfer of real estate.

Respectfully,
JOHN W. BRICKER,
Attorney General.

92.

PROSECUTING ATTORNEY—ENTITLED TO AN ADVANCE OF ONE-HALF REDUCED SALARY UNDER SECTION 3004, GENERAL CODE—TELEPHONE BILLS PAID FROM GENERAL FUND.

SYLLABUS:

1. *During each of the years 1933 and 1934, prosecuting attorneys may only be allowed, under the terms of section 3004, General Code, the sum of one-half the amount computed by applying the reduction schedule set forth in section 3 of Amended Substitute House Bill No. 1 of the 89th General Assembly, third special session, to the sum total determined under the provisions of section 3003, General Code.*

2. *Telephone toll bills of the office of the prosecuting attorney are payable from the appropriation "supplies and facilities" appropriated from the general fund of the county.*

COLUMBUS, OHIO, January 31, 1933.

HON. EDWIN S. DIEHL, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

"Kindly give me your opinion on the following question:

The salary of the Prosecuting Attorney of Defiance County based upon the 1930 census is \$1250, which entitled the Prosecuting Attorney to an allowance of \$625 annually to be drawn immediately when he takes office under the provisions of Section 3004, which of course must be accounted for under the provision of said section.

In view of the recent action of the legislature the Prosecuting Attorney's salary of Defiance County has been reduced to \$1175. Kindly advise whether the Prosecuting Attorney under the provisions of Section 3004 shall demand the sum of \$625 or the sum of \$587.

Also advise whether in your opinion telephone toll bills of the office of the Prosecuting Attorney shall be paid out of the fund created under 3004 or from the General Fund of the County. It is necessary that this opinion be forthcoming as soon as possible in order that the County Commissioners may properly determine the budget for the ensuing year."

Sections 1, 3 and 6 of Amended Substitute House Bill No. 1 of the 89th General Assembly, third special session, read as follows:

"Section 1. During the period beginning January 1, 1933, and ending December 31, 1934, the compensation of all elective officials which is fixed, limited or determined, in whole or in part, by sections 2856-4, 2990, 2991, 2992, 2993, 2994, 2995, 3001, 3003, 7181 of the General Code shall be reduced according to the schedule set forth in section 3 of this act, the provisions of such sections of the General Code to the contrary notwithstanding."

"Section 3. Such reduction shall be made in the following manner: there shall be a reduction of 5 per cent of each annual salary of \$1,000 or less, and on the first \$1,000 of each annual salary of an amount greater than \$1,000; there shall be a reduction of 10 per cent of that portion of each annual salary in excess of \$1,000 up to and including \$2,000; there shall be a reduction of 12½ per cent of that portion of each annual salary in excess of \$2,000 up to and including \$3,000; there shall be a reduction of 15 per cent of that portion of each annual salary in excess of \$3,000 up to and including \$4,000; there shall be a reduction of 17½ per cent of that portion of each annual salary in excess of \$4,000 up to and including \$5,000; there shall be a reduction of 20 per cent of that portion of each annual salary in excess of \$5,000."

"Section 6. This act shall be in effect from January 1, 1933, until December 31, 1934."

Section 3003 of the General Code provides for the determination of the salary of the prosecuting attorney based on the population of his county. It is therefore clear from the terms of section 1 of Amended Substitute House Bill No. 1, *supra*, that the salary of the prosecuting attorney is to be reduced according to the schedule set out in section 3 of the act. In my Opinion No. 69, rendered January 20, 1933, I held that Amended Substitute House Bill No. 1 was effective as a law of Ohio at midnight of December 31, 1932. Since the term of the prosecuting attorney, under section 2909, General Code, begins "on the first Monday of January next after his election" (this year January 2, 1933), it is obvious that Amended Substitute House Bill No. 1 was in effect before the present prosecuting attorneys took office. Hence, the salary reductions apply to the prosecuting attorneys taking office January 2, 1933.

Section 3004 of the General Code, which you mention in your letter, reads as follows:

"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 person 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.

Provided that nothing shall be paid under this section until the prosecuting attorney shall have given bond to the state in a sum not

less than his official salary to be fixed by the court of common pleas or probate court with sureties to be approved by either of said courts, conditioned that he will faithfully discharge all the duties enjoined upon him, by law, and pay over, according to law, all moneys by him received in his official capacity. Such bond with the approval of such court of the amount thereof and sureties thereon and his oath of office inclosed therein shall be deposited with the county treasurer.

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."

From the provisions of sections 1, 3 and 6 of Amended Substitute House Bill No. 1, quoted, supra, when read with those of section 3004, above noted, it seems clear that the "official salary" referred to in said section 3004, General Code, will, during the years 1933 and 1934, be the amount obtained by applying the scale of reduction set forth in section 3 of said Amended Substitute House Bill No. 1 to the sum computed under section 3003, General Code.

Consequently, by way of specific answer to your first question, I am of the opinion that you, as prosecuting attorney, may only be allowed the sum of \$587.50 during each of the years 1933 and 1934 as your 3004 fund.

Coming now to your second question, it is to be noted that the fund under section 3004 is "to provide for expenses which may be incurred by him (the prosecuting attorney) in the performance of his official duties and in the furtherance of justice, *not otherwise provided for.*"

It appears to me that the expense of telephone calls is *otherwise provided for.* Section 2419, General Code, reads as follows:

"A court house, jail, public comfort station, offices for county officers and an infirmary shall be provided by the commissioners when in their judgment they or any of them are needed. Such buildings and offices shall be of such style, dimensions and expense as the commissioners determine. They shall also provide all the equipment, stationery and postage, as the county commissioners may deem necessary for the proper and convenient conduct of such offices, and such facilities as will result in expeditious and economical administration of the said county offices. They shall provide all room, fire and burglar-proof vaults and safes and other means of security in the office of the county treasurer necessary for the protection of public moneys and property therein."

Under the last quoted section, it seems clear that the county commissioners are required to provide all facilities as will result in expeditious and economical administration of the county offices (including the office of the prosecuting attorney). In order to expedite business, long distance tele-

phone calls are often necessary, and the expense of such calls seems to me to be a proper charge against the maintenance appropriation made by the county commissioners for the supplies and facilities of the office of the prosecuting attorney under this section.

Section 5625-3, General Code, provides that "the taxing authority of each subdivision is hereby authorized to levy taxes annually, subject to the limitations and restrictions of this act (G. C. secs. 5625-1 to 5625-39) on the real and personal property within the subdivision *for the purpose of paying the current operating expenses of the subdivision * * **" Section 5625-1 (c) states that the words "taxing authority" shall mean in the case of any county, the county commissioners. Section 5625-5, General Code, reads in part:

"The purpose and intent of the general levy for current expenses is to provide one *general operating fund* derived from taxation *from which any expenditure for current expense of any kind may be made * * **"

Obviously, the expense of the telephonic communications of the county officers is a current expense, to be provided for by the county commissioners in the general levy, and appropriated annually to the various officers under the annual appropriation measure provided for by section 5625-29, General Code.

In view of the above considerations, I am of the opinion that telephone toll bills of the office of the prosecuting attorney should be paid out of the appropriation made by the county commissioners from the general county fund for office supplies and facilities for the office of the prosecuting attorney.

Respectfully,

JOHN W. BRICKER,
Attorney General.

93.

APPROVAL, BONDS OF TWINSBURG TOWNSHIP RURAL SCHOOL
DISTRICT, SUMMIT COUNTY, OHIO—\$4,000.00.

COLUMBUS, OHIO, February 1, 1933.

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