

Ohio Railway and Power Corporation of St. Marys, Ohio, whereby there was granted to said corporation and to its successors and assigns the right to take water from the St. Marys feeder to the Miami and Erie Canal for the purpose of cooling condensers, generating steam and necessary sanitary purposes, for a period of ten years. The rental provided for in said lease for the use of the water is \$4,000.00 per annum, payable in semi-annual installments of \$2,000.00 each.

An examination of said lease shows that the same has been executed in accordance with the authority granted to you by the provisions of Sections 14009, et seq., General Code, and in conformity with the provisions of said section. Inasmuch, however, as there was nothing in said lease fixing the maximum amount of water that said lessee is authorized to take out of said feeder annually other than the provision that such water was to be withdrawn through a 24 inch intake pipe, and inasmuch as I did not have before me any other information on this subject, said lease and the duplicate and triplicate copies thereof were returned to you by letter with the statement that on the situation thus presented, I was not in a position to approve the rental provided for in said lease. You have re-submitted said lease and the copies thereof with a communication which reads as follows:

"Referring to the proposed water lease to The Western Ohio Power Corporation, we beg to advise that the annual rental was based on an annual consumption of one billion, five hundred million (1,500,000,000) gallons, at two and two-thirds ($2 \frac{2}{3}$) mills per thousand gallons, this rate being somewhat less than the rate for water in the Portage Lakes District, by reason of limited demand for water at St. Marys.

(While they are using the same intake installation that they used when operating their complete plant, consisting of six units, but three are now in use, and at times but two units.

We are returning the triplicate copies of the lease herewith.

Trusting this answers your inquiry and explains the situation, I am,"

Under the above statement with respect to the amount of water to be withdrawn annually under said lease, approximately all of which is to be returned to the feeder after use, I do not feel that in the exercise of the discretion imposed in me by the provisions of Section 14009, General Code, I should attempt to override your judgment in this matter, even though the rental to be paid by the lessee is somewhat less than that paid in other districts where there is a greater demand for water for manufacturing and factory uses. I am, therefore, approving said lease as is evidenced by my endorsement thereon and on the duplicate and triplicate copies thereof.

Respectfully,

GILBERT BETTMAN,

Attorney General.

407.

COUNTY COMMISSIONERS—ADOPTION OF REGULATION THAT SUPERINTENDENT OF COUNTY HOME MAY NOT HIRE MEMBER OF HIS FAMILY WITHOUT CONSENT OF COMMISSIONERS—LEGAL.

SYLLABUS:

Under the provisions of Section 2523 of the General Code, county commissioners may provide a regulation to the effect that the superintendent of the county home may

not employ any member of his family to work at such home without the consent of the county commissioners.

COLUMBUS, OHIO, May 16, 1929.

HON. MERVIN DAY, *Prosecuting Attorney, Paulding, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads :

“I am enclosing herewith a copy of Rule 2, recently adopted by the board of commissioners of Paulding County, Ohio, for the government and regulation of the Paulding County home, on the subject of the superintendent of the home hiring a member of his family to do work at the county home.

The superintendent’s wife is acting as matron of the home and I understand that the county commissioners do not raise this question but that they seek by the rule mentioned to somewhat limit the superintendent in hiring his boys and girls to do work.

Inasmuch as the superintendent is questioning the right of the commissioners to make such a rule we desire to know whether in the opinion of your department the commissioners of Paulding county have the right of enforcing this rule.

They are acting under Section 2522, G. C.”

The rule to which you refer, and a copy of which you enclose, reads :

“RULE No. 2. LABOR.

The superintendent shall not hire any member of his family to work at the home until he first gets permission from the board of county commissioners.”

Section 2522 of the General Code requires the county commissioners to make all contracts for new buildings and the repairs of existing buildings necessary for the county infirmary. Said section further requires the board of county commissioners to “prescribe such rules and regulations as it deems proper for its management and good government, and to promote sobriety, morality and industry among inmates.” The section further provides that :

“The superintendent may employ a matron and such labor from time to time, at rates of wages to be fixed by the county commissioners, as may not be found available on the part of the inmates of the institution.

The superintendent and matron shall be removed if they or either of them, require or permit inmates or employes to render services for the private interests of the superintendent, matron or member of the board of county commissioners, or any private interest. * * * ”

The above section standing alone would seem to indicate that some discretion is vested in the superintendent as to whom he employs. However, it appears that the wages are to be fixed by the county commissioners, which indicate that such commissioners are to exercise some control over such employment. The next section of the General Code, which provides for the appointment of a superintendent by the county commissioners, among other things, provides that “the superintendent shall perform such duties as the commissioners impose upon him, and be governed in all respects by their rules and regulations.” The section last mentioned seems clearly to authorize the board of county commissioners to prescribe rules and regulations for the performance of the duties of the superintendent, and such power is not limited, except, of course, that any such rule should be reasonable. In other words, any such regula-

tion adopted by the county commissioners would necessarily be regarded as valid and binding unless and until the same had been held by some court of proper jurisdiction to be an abuse of their discretion.

Based upon the foregoing, it is my opinion that the county commissioners, under the provisions of Section 2523 of the General Code, may provide a regulation to the effect that the superintendent of the county home may not employ any member of his family to work at such home without the consent of the county commissioners.

Respectfully,

GILBERT BETTMAN,
Attorney General.

408.

TOWNSHIP TRUSTEES—PURCHASE OF TRUCKS—COMPETITIVE BIDDING—SECTION 3373, GENERAL CODE, CONSTRUED.

SYLLABUS:

Under the provisions of Section 3373 of the General Code, all purchases of trucks by township trustees, where the amount involved exceeds five hundred dollars, shall be made in pursuance to competitive bidding, in accordance with said section. The rule relative to articles being essentially and absolutely non-competitive, has no application to such purchases under this section.

COLUMBUS, OHIO, May 16, 1929.

HON. JESSE K. BRUMBAUGH, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent communication which reads as follows:

“I have been requested by several of the township boards of trustees of Darke County, Ohio, for an interpretation of Section 3373 of the General Code of the State of Ohio relative to its application for the necessity of advertising for bids when they desire to purchase Omort trucks, a product of the American Aggregates Corporation, formerly known as the Greenville Gravel Corporation. The Omort truck manufactured by the American Aggregates Corporation is equipped with a Hopper body with a device for controlling the material from the body from the driver's seat, which is a patented feature, and it is claimed that no other piece of equipment on the market has a similar device. In this connection, on November 30, 1923, former Attorney General Crabbe, in his opinion No. 943, passes upon the question of whether or not advertising for bids was necessary under Sections 4063 and 4328 of the General Code of Ohio, when the article to be purchased was wholly non-competitive. The syllabus of the opinion above referred to is as follows:

‘The Ohio courts recognize the rule that in purchases in which competition is essentially and absolutely non-competitive, the awarding authorities need not attempt competition in letting the contract. However, the statutes requiring competition bidding cannot be disregarded in those cases in which the construction is only imperfectly competitive, and in all cases every effort must be made to follow such statutes. It is a question of fact as to whether a given construction is non-competitive or otherwise to be determined in the first instance by the awarding authorities.’