

4516.

OLD AGE PENSION LAW — COUNTY BOARD OF AID FOR
AGED EMPLOYEES SUBJECT TO APPROVAL
OF DIVISION OF AID FOR THE AGED.

SYLLABUS:

By virtue of the provisions of section 1359-16 G. C., a county board of aid for the aged has the authority to employ such investigators, clerks and other employes as are absolutely necessary for the performance of its duties, but all such appointments are subject to the approval of the Division of Aid for the Aged in the Department of Public Welfare. The Division of Aid for the Aged has no authority to appoint such employees, but it is empowered to approve or reject any appointment made by the Board of Aid for the Aged.

COLUMBUS, OHIO, August 7, 1935.

HON. ROY L. HENRY, *Prosecuting Attorney, Ironton, Ohio.*

DEAR SIR:—Your recent letter requesting my opinion, reads as follows:

“I request your opinion concerning the power to appoint administrators and other employes of the Boards of Aid for the Aged in the various counties of the State. I call your attention to Sections 1359-15 and 1359-16 of Ohio General Code, which are as follows:

§1359-15. “The Division shall have the duty and authority to make rules and regulations governing applications for aid, certificates of aid, reports and records of the county boards, method of appeal from decisions of a Board, appointment, qualifications, and salaries of investigators and other employes of the Boards and all other proceedings under this act; and to prescribe forms for applications, certificates, reports, records and accounts of the Boards, and other matters; and such rules and regulations, and all decisions and orders of the Division, shall be binding upon all county Boards.”

§1359-16. “The county Boards shall keep such records and make such reports as the Division shall prescribe.

Each Board shall have authority to employ subject to approval by the Division, such investigators, clerks, and other employees as are absolutely necessary for the performance of its duties under this act, and to fix the compensation of all employees, subject to approval by the Division.

The salaries of employes, office supplies, and other necessary expenses of each county Board, upon approval of vouchers therefor

by the Division, shall be paid by the Treasurer of State, upon warrants drawn by the Auditor of State, and in manner similar to that in which salaries and expenses of state departments are paid, and as prescribed by the Auditor of State."

The State Civil Service Commission recently held examinations to determine the eligibility of persons to be appointed as administrators in the Division of Aid for the Aged in the counties. The following persons received eligible grades from the commission for appointment in Lawrence county in the order named, 1. Wm. Taylor, 2. Emerson Simon, 3. Ezra Dean. On July 12, 1935, the following action was taken by the Board of Aid for the Aged,

'Ironton, Ohio
July 12, 1935.

Motion by Colegrove that Wm. Taylor, the present Administrator for the Aid for the Aged in Lawrence County, be appointed to the above named position and a copy of said appointment be sent to the Chief of the Division of Aid for the Aged at Columbus, Ohio, and to the State Civil Service Commission at a salary as per the State schedule.

Seconded by Payne.

Upon roll call the vote was as follows:

R. J. Colegrove—Aye
F. W. Payne —Aye
Mont Miller —Aye'

It happens that this board in Lawrence county is composed of the members of the Board of County Commissioners.

The State Civil Service Commission and the Division of Aid for the Aged were notified of the action of the Lawrence County Board.

Mr. Taylor has been notified that his position as administrator under temporary appointment will be discontinued on the 31st of July 1935.

It is the contention of the Lawrence county Board of Aid for the Aged that the power of making appointments rests entirely in their discretion. We understand that the Division of Aid for the Aged at Columbus, has taken the position that the power to make appointments rests with them entirely and that County Boards will be ignored."

The Old Age Pension Law (§§1359-1 to 1359-30, General Code) provides in Section 1359-11 G. C.:

"For the purpose of administering the provisions of this act

there is hereby created in the State Department of Public Welfare a Division of Aid for the Aged, herein referred to as the 'Division'.

The Chief of the Division shall be under the direct supervision and control of the Director of Public Welfare, * * *. He shall appoint all necessary assistants, investigators, clerks and other employes, and fix their duties and salaries, subject to the approval of the Director of Public Welfare."

Section 1359-12, G. C. reads:

"In each county of the state there shall be a Board of Aid for the Aged for the purpose of administering the provisions of this act, herein referred to as the 'Board.' "

The pertinent provisions of Section 1359-16, General Code, referred to in your letter, read:

"Each Board shall have authority to employ, subject to approval by the Division, such investigators, clerks, and other employees as are absolutely necessary for the performance of its duties under this act, and to fix the compensation of all employees subject to approval by the Division."

It is fundamental that courts are powerless to construe the provisions of a statute when its meaning is apparent from the words used and no ambiguity exists. The provisions of Section 1359-16, General Code, quoted supra, are clear and unambiguous. The county board is authorized to employ such persons as are absolutely necessary for the performance of its duties under the Old Age Pension Law. Upon no one else is such authority conferred. However, it is equally clear that Section 1359-16, General Code, makes the employment of such persons, by the Board, subject to the approval of the Division. It is thus apparent that the employment of any person to assist a Board in the administration of its duties must be approved by the Board and also the Division. The act of employing must originate with the Board and end with the Division.

Thus, although the power of making appointments of persons to assist the County Board rests completely and entirely with the Board, nevertheless, such appointment is made subject to the approval or rejection of the Division. From the eligible list of three names certified by the Civil Service Commission of Ohio, the County Board appoints one and notifies the Division of such appointment. If the Division approves, the Civil Service Commission is notified of the employment. If the Division rejects the appointment, it must so notify the County Board, which selects one of the other names on

the eligible list. The appointment must be made from the eligible list of three names certified by the Civil Service Commission and the Division of Aid for the Aged is unauthorized to appoint or suggest to the County Board who shall be appointed to assist the said Board in performing its duties under the law. The employment of persons "subject to the approval of the Division" definitely confers upon said Division the authority to disapprove an appointment of the county Board. No statutory requirements for such employees are established by the Old Age Pension Law. Therefore, the Chief of the Division is vested with discretionary powers limited only by the proposition that all public officials given such authority are answerable for a gross abuse of discretion.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4517.

COUNTY COMMISSIONERS—UNAUTHORIZED TO DEDUCT
FROM BILL OF SOLDIER'S BURIAL COMMITTEE FOR
BURIAL OF SOLDIER WHEN.

SYLLABUS:

After the soldiers' burial committee approves and certifies to the county commissioners a statement of the expenses incurred in the burial of a soldier, and in the absence of fraud or collusion, the county commissioners have no authority to deduct any amount from the bill, provided the amount paid by the county may not exceed the sum of one hundred (\$100.00) dollars.

COLUMBUS, OHIO, August 8, 1935.

HON. RAY W. DAVIS, *Prosecuting Attorney, Circleville, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion which reads as follows:

"I would like to submit for your consideration, the following question, for an opinion from your office.

Do the County Commissioners of any county, have a right under Section 2950 and following, of the General Code of Ohio, relative to the burial of soldiers, the mothers of soldiers, wives or widows of a soldier, to deduct any amount from the \$100.00 allowed by statute, where the Committee in a Ward or Township from