

who has reached the age of seventy years and before the end of the year has filed with the State Employees Retirement Board his "Application for Continuation in Active Service Past Compulsory Retirement Age" approved by the head of his department or institution, the head of the department or institution can not request the State Employees Retirement Board to permit him to withdraw such approved application after January first.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1952.

PROSECUTING ATTORNEY—FUND CREATED BY SECTION 3004 G. C. DESIGNATED FOR HIS USE AND EXPENSES NOT OTHERWISE PROVIDED FOR—"EQUIPMENT AND SUPPLIES" UNDER SECTION 2419 G. C. FOR USE OF SHERIFF AND DEPUTIES—STATUS CAMERA, POLICE SIREN, FINGER PRINT RECORD, HIGH POWERED RIFLE.

SYLLABUS:

A camera, police siren and high powered rifle for the use of the sheriff and his deputies are items properly included under the "equipment and supplies" provided for in Section 2419, General Code, and therefore may not be purchased from money appropriated under Section 3004, General Code, as the fund created by this section is designated for use of the prosecuting attorney and only for his expenses not otherwise provided for.

COLUMBUS, OHIO, February 19, 1938.

HON. THEODORE TILDEN, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR: This will acknowledge the receipt of your recent communication. Your request for an opinion reads as follows:

"May the Prosecutor's office buy a camera for the purpose of taking finger-prints in the procuring of evidence out of the money appropriated under Section 3004 of the General Code? This camera will be used by one of the Deputy Sheriffs who specializes in finger-print work.

May a police siren for use of the Sheriff's office and also a high-powered rifle be purchased for the Sheriff's office out of moneys appropriated under Section 3004 of the General Code of Ohio?"

Section 3004 of the General Code referred to in your letter provides in part:—

"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 * * * "

You will observe that this fund allowed by this section is expressly designated for the use of the prosecuting attorney "for expenses incurred by *him* in the performance of his *official duties*, and in the furtherance of justice, *not otherwise provided for.*"

While it has been the custom of this office to interpret Section 3004, *supra*, liberally with respect to expenditures of the prosecutor authorized by it, the limitations and restrictions expressly imposed upon this fund by the language of the section cannot be ignored.

Directing your attention to Section 2419, General Code, you will find that the matter of equipment and supplies for county offices is provided for 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 * * * "

Several opinions from this office have been given as to what is properly included in the clause "They shall provide all equipment * * * 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. Most apropos to the question before us are

an Opinion of the Attorney General for 1927, Vol. 1, page 151, in which it was held that handcuffs and pistols for the sheriff and his deputies should be purchased under Section 2419, General Code; an Opinion of the Attorney General for 1931, Vol. 1, page 149, in which tear gas protective equipment for the treasurer's office was allowed under Section 2419, and an Opinion of the Attorney General for 1933, Vol. 1, page 88, which held that telephone toll charges for the prosecuting attorney's office belonged under the supplies and equipment provided for in Section 2419, *supra*, rather than under the special fund provided in Section 3004, General Code.

It would not, I am sure, require much argument to conclude that a camera for finger-print work, a police siren and a high powered rifle are in view of the opinion given, matters properly belonging under equipment and supplies which are necessary to a proper and convenient conduct of the sheriff's office, as well as, conducive to an expeditious administration of the said office.

This being true, expenditures for this equipment could not well come from the special "3004" fund allotted to the prosecuting attorney for besides being for the sheriff's office, the equipment in question is unmistakably "otherwise provided for" and so violates a limitation expressly imposed upon the fund.

In view of these facts it is my opinion that a camera, police siren and high powered rifle for the use of the sheriff and his deputies are items properly included under the "equipment and supplies" provided for in Section 2419, General Code, and therefore may not be purchased from money appropriated under Section 3004, General Code, as the fund created by this section is designated for use of the prosecuting attorney and only for his expenses not otherwise provided for.

Respectfully,

HERBERT S. DUFFY,
Attorney General.