

Note from the Attorney General's Office:

1925 Op. Att'y Gen. No. 25-2573 was overruled by
1931 Op. Att'y Gen. No. 31-3791, 1934 Op. Att'y Gen.
No. 34-3605, 1944 Op. Att'y Gen. No. 44-6935 and
2006 Op. Att'y Gen. No. 2006-042.

2573.

COUNTY BUDGET COMMISSION—DEPUTY TREASURER OR DEPUTY AUDITOR MAY NOT ACT AS MEMBER OF SUCH COMMISSION.

SYLLABUS:

A deputy treasurer or a deputy auditor may not act in the place of a treasurer or auditor as members of a county budget commission or the county board of revision.

COLUMBUS, OHIO, June 17, 1925.

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

GENTLEMEN:—I am in receipt of your communication as follows:

"We respectfully request you to furnish this department with your written opinion upon the following:

"Question: May a deputy treasurer or a deputy auditor act in the place of the treasurer or auditor as members of the county budget commission or the county board of revision?"

Section 5649-3b, General Code, in part provides as follows:

"There is hereby created in each county a board for the annual adjustment of the rates of taxation and fixing the amount of taxes to be levied therein, to be known as the budget commissioners. The county auditor, the county treasurer and the prosecuting attorney shall constitute such board. The budget commissioners shall meet at the auditor's office in each county on the first Monday in August annually and shall complete their work on or before the third Monday in that month, unless for good cause the tax commission of Ohio shall extend the time for completing the work. Each member shall be sworn faithfully and impartially to perform the duties imposed upon him by law. Two members shall constitute a quorum. The auditor shall be the secretary of the board and shall keep a full and accurate record of all proceedings."

By this section the county budget commission is composed of county auditor, county treasurer, and prosecuting attorney, and the section further provides for the appointment of messengers and clerks as the board deems necessary, and provides for the actual and necessary expenses of such commission.

Section 9, General Code of Ohio in part provides as follows:

"A deputy, when duly qualified, may perform all and singular the duties of his principal."

Section 9 must be read in connection with the sections authorizing the appointment of deputies.

Section 2563 G. C. provides in part as follows:

"The county auditor may appoint one or more deputies to aid him in the performance of his duties."

Section 2637, relating to county treasurer provides as follows:

"Each county treasurer may appoint one or more deputies, and he shall be liable and accountable for their proceedings and misconduct in office."

A reading of the sections relating to deputies will disclose that their duties as deputies are not specifically set out and no limitation is placed upon the duties which may be performed by deputies.

In Throop on Public Offices, page 539, the following rule is laid down:

"Thus, the rule is well settled here that ministerial powers may generally be executed by a deputy but judicial powers may not. * * * The rules of law, applicable to such powers, are applied in accordance with the particular nature of the power in question, without regard to the general character of the functions of the officer. And this principle applies, with respect to the power of delegation. Thus, where an officer's powers are partly ministerial and partly of a judicial nature, the exercise of the former may be given to the deputy but not that of the latter."

This general ruling relating to the powers which may be exercised by a deputy has been followed by the supreme court of this state.

In the case of Hulse vs. State, 35 O. S., page 421, would seem to be an authority for an adoption of the above rule. The court, on page 425, say:

"A duty enjoined by statute upon a ministerial officer, and an act permitted to be done by him, may be performed by his lawful deputy."

While this decision does not state in so many words that a judicial function may not be exercised by a deputy, it has been cited in numerous instances as authority for such rule by reason of the statement in the alternative.

It is, therefore, believed that the rule in this state is that a deputy may perform a purely ministerial duty of his principal but that he may not exercise a duty enjoined upon his principal which is of a judicial or quasi-judicial nature or a duty requiring the exercise of judgment or discretion.

Section 5649-3c G. C. relates to the duties of the budget commission and provides as follows:

"The auditor shall lay before the budget commissioners the annual budgets submitted to him by the boards and officers named in section 5649-3a of this act, together with an estimate to be prepared by the auditor of the amount of money to be raised for state purposes in each taxing district in the county, and such other information as the budget commissioners may request, or the tax commission of Ohio may prescribe. The budget commissioners shall examine such budgets and estimates prepared by the county auditor, and ascertain the total amount proposed to be raised in each taxing district for state, county, township, city, village, school district, or other taxing district purposes. If the budget commissioners find that the total amount of taxes to be raised therein does not exceed the amount authorized to be raised in any township, city, village, school district, or other taxing district in the county, the fact shall be certified to the county auditor. If such total is found to exceed such authorized amount in any township, city, village, school district, or other taxing district in the county, the budget commissioners shall adjust the various amounts to be raised so that the total amount thereof shall not exceed in any taxing district the sum authorized to be levied therein. In making such adjustment the budget commis-

sioners may revise and change the annual estimates contained in such budgets and may reduce any or all items in any such budget, but shall not increase the total of any such budget, or any item therein. The budget commissioners shall reduce the estimates contained in any or all such budgets by such amount or amounts as will bring the total for each township, city, village, school district, or other taxing district, within the limits provided by law, but if this aggregate of the items of any school district budget for purposes for which taxes subject to the limitations imposed by section 5649-3a of the General Code are to be levied would require a total levy, subject to such limitation, of two mills in such districts in which all the limitations imposed by such section are operative, or of two and two-tenths mills in such districts in any part of which the township limitation therein imposed is not operative, the budget commissioners shall not reduce such items of such school district budget below an amount which would be produced by a levy in the whole district at the greater of the two rates mentioned in this section.

“When the budget commissioners have completed their work they shall certify their action to the county auditor, who shall ascertain the rate of taxes necessary to be levied upon the taxable property therein of such county, and of each township, city, village, school district, or other taxing district, returned on the grand duplicate, and place it on the tax list of the county.”

It will be seen from an examination of this section that the entire duty of a budget commission is one which requires the exercise of judgment and discretion or that of a quasi-judicial nature.

Section 5580 G. C. provides :

“The county treasurer, county auditor and the president of the board of county commissioners of each county shall constitute a county board of revision.”

Section 5597 G. C. provides :

“It shall be the duty of the board of revision to hear complaints relating to the valuation or assessment as the same appears upon the tax duplicate of the then current year, of both real and personal property laid before it by the county auditor and it shall investigate all such complaints and may increase or decrease any such valuation or correct any assessment complained of, or it may order a reassessment by the original assessing officer.”

It will be seen that the duties provided under this section also are such that require the exercise of judgment or discretion and of a quasi-judicial nature.

It is, therefore, my opinion that a deputy treasurer or a deputy auditor may not act in the place of a treasurer or auditor as members of a county budget commission or the county board of revision.

Respectfully,
C. C. CRABBE,
Attorney General.