

395.

APPROVAL, NOTES OF SMITH TOWNSHIP RURAL SCHOOL DISTRICT,
MAHONING COUNTY, OHIO—\$3,155.00.

COLUMBUS, OHIO, March 24, 1933.

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

396.

APPROPRIATION—DEPUTY AND CLERK HIRE FOR COUNTY OFFICES—EXCEPT FOR ABUSE OF DISCRETION COUNTY COMMISSIONERS DECISION IS FINAL.

SYLLABUS:

1. *The duty of making appropriations for the payment of deputy and clerk hire in the various county offices is placed upon the board of county commissioners by Section 5625-29, General Code.*
2. *No right of appeal to the Tax Commission of Ohio has been provided, by the Ohio statutes from an order of the board of county commissioners fixing the amount of the appropriation for deputy hire for the office of county auditor even though in some respects the county auditor may be the agent of the Tax Commission.*
3. *The Court of Common Pleas of the county has no jurisdiction to hear an appeal from such order by virtue of the provisions of Section 2461, General Code.*
4. *Since the statute places the duty upon the board of county commissioners to make appropriations for the various county purposes within certain restrictions provided by statute and the board of county commissioners has made such appropriations the writ of mandamus can not be used to amend or alter such appropriation order, unless there has been such disregard of the duties imposed upon such board by the legislature as will amount in law to an utter failure on the part of the board of county commissioners to use discretion and judgment.*

COLUMBUS, OHIO, March 25, 1933.

HON. VERNON L. MARCHAL, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR:—Your recent request for my opinion reads:

“If the county commissioners, in their appropriation for the clerk and deputy hire for the office of the County Auditor is, in the judgment and opinion of such Auditor, insufficient, what is his remedy to secure an additional appropriation?”

As he is the local representative of the Ohio Tax Commission, I would like to have your opinion as to whether or not an appeal could be taken to the Tax Commission from the appropriation as made by the county commissioners.

Would also desire your opinion as to whether or not he would be authorized to file a mandamus suit to compel the Commissioners to appropriate sufficient money for deputy and clerk hire.”