

constructing, widening and reconstructing such roads and highways and the cost of materials forming a part of said improvement; \* \* \* \* .”

Analyzing the provisions of the sections hereinbefore quoted and referred to, there appears to be clear authority for using such funds for widening, reconstructing and maintaining public highways, roads and streets. However, after mentioning the broad power in the purpose clause of said act, Section 5541-8, General Code, specifically limits said power in certain respects. While such moneys are paid to townships for the sole purpose of constructing, widening and reconstructing the public roads within such township, said section contains a proviso that such moneys shall be used by the township trustees for the purpose of constructing, widening and reconstructing unimproved roads of the secondary system or county system of highways if there be such. If there are no such unimproved dirt roads of the secondary system within such township, then the funds may be used for constructing, widening and reconstructing such township roads as the township trustees shall designate. From the foregoing, it is believed that if there are no unimproved dirt roads of the county secondary system within the township to which you refer, then the township trustees may use such funds for the improvement of township roads and in such improvement the trustees may widen any road irrespective of the type of improvement.

Based upon the foregoing and in specific answer to your inquiry, you are advised that:

(1) Under the provisions of House Bill No. 335, enacted by the 88th General Assembly, township trustees shall first use the money derived from the gasoline tax for the purpose of constructing, widening and reconstructing unimproved dirt roads of the county system within the township.

(2) If there be no unimproved dirt roads of the county highway system within the township, the township trustees may use such funds for the purpose of constructing, widening and reconstructing such township roads as they may designate. In the improvement of such township roads, the township trustees may widen a hard-surface road by grading a surface to be used as a double track adjacent to such hard surface.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

608.

COUNTY COMMISSIONERS—APPROPRIATION FROM GENERAL FUND  
TO MEET EXPENSES INCURRED IN DEFENDING CIVIL SUIT  
AUTHORIZED.

*SYLLABUS:*

*County commissioners may make an appropriation from the general fund of the county to pay the expense incurred by the prosecuting attorney in making an investigation and preparing a defense for the county commissioners in a civil suit brought against them in their official capacity.*

COLUMBUS, OHIO, July 11, 1929.

HON. JOHN H. HOUSTON, *Prosecuting Attorney, Georgetown, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which reads as follows:

“Last year, 1928, the funds in the possession of this office under provision

of Section 3004, General Code, were substantially exhausted. At said time a certain suit against the commissioners of Brown county for damages in the sum of \$22,000 required investigation by this office in order that proper answer could be filed in same. In this respect it was imperative that certain information be had as to transactions of the plaintiff in New York City. The prosecuting attorney had no co-counsel nor sufficient funds to investigate same cause of action properly. Thereupon the county commissioners of Brown County appropriated \$200.00 for expenses of this investigation. This office at first viewed the matter that available funds might be had under Section 3004-1, G. C., but found this to contemplate only criminal matters. You will readily see the necessity of making this investigation and that no funds were available unless by special appropriation of board of commissioners under their power to defend suits by virtue of Section 2408, G. C. Was such appropriation and payment legal? Otherwise, I see no means to defend such actions through this office when funds under 3004 are exhausted. It would be a hardship to order the repayment of this sum, spent for benefit of county, perhaps saving some \$22,000, and urgently necessary at the time. Kindly let me have your opinion at an early date."

Section 2408, General Code, provides in part as follows:

"The board of county commissioners may sue and be sued, plead and be impleaded in any court of judicature. \* \* \*"

It is a general rule that county officials, such as county commissioners, have only such powers as are expressly given or necessarily implied from powers expressly given. Since the county commissioners are given the power to sue or be sued, plead or be impleaded, in so doing it is necessary for them to make investigations of facts pertaining to suits in which they are involved in their official capacity, either for the purpose of making preparations to maintain a suit or to defend a suit, and, therefore, by necessary implication they have the right to make such investigation themselves or to employ some one, as they see fit, and they have the right to pay the expense of such investigation from any funds not otherwise appropriated, from which they are authorized to pay the general expense of the administration of their office. It seems, therefore, that your inquiry resolves itself to this question, whether or not the statute makes it the duty of the prosecuting attorney to make an investigation for the purpose of obtaining the necessary facts to defend a suit brought against the county commissioners in their official capacity. Where an officer is charged by statute with specific duties, such as the duty of making an investigation for county commissioners in cases in which they are sued or in which they sue, and the statutes expressly provide funds for such expenditure, it is clearly well settled that other funds cannot be appropriated under any implied authority.

Section 2917 of the General Code provides in part as follows:

"The prosecuting attorney shall be the legal adviser of the county commissioners \* \* \* . He shall prosecute and defend all suits and actions which any such officers or boards may direct or to which it is a party."

The word defend is defined in Black's Law Dictionary, as follows: "To contest or endeavor to defeat a claim or demand against one in a court of justice." This definition of defend is quoted in the case of *Boehmer vs. Big Rock Creek Irrigation District*, 48 Pacific, 908. It is the duty of the prosecuting attorney to be present in court and contest any action against the county commissioners brought against them

in their official capacity, but the duty rests upon the county commissioners to make the preliminary preparation which is to be presented to the prosecuting attorney for his use in court. Since it is the duty of the county commissioners to make the investigation necessary for the preparation of a defense in an action instituted against them in their official capacity, and no such duty is imposed by statute upon the prosecuting attorney, and there being no inhibition against such an employment of the prosecuting attorney as an individual, I am of the opinion, therefore, that the county commissioners may make an appropriation from the general fund of the county to pay the expense incurred by the prosecuting attorney in making an investigation and preparing a defense for the county commissioners in a civil suit brought against them in their official capacity.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

609.

PUBLIC PARKS—BUCKEYE LAKE—WHAT COUNTY SHERIFFS MAY ENFORCE TRAFFIC LAWS.

SYLLABUS:

*The sheriff of any county, in which a part of Buckeye Lake is located, may enforce the rules prescribed by the Legislature for the government of such park, even though such power has been conferred by the Legislature upon the director of public works.*

COLUMBUS, OHIO, July 11, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which is as follows:

“The unfortunate occurrence at Buckeye Lake Sunday afternoon, resulting in the death of a young man, whose body was recovered Tuesday morning, and reported to have been found by the coroner of Fairfield County to have had his neck, collar-bone and nose broken, indicating that he had been struck by something while on or in the water, brings up the question as to jurisdiction and responsibility for the enforcement of state traffic laws on Buckeye Lake, and other lakes dedicated as public parks.

We would, therefore, ask you to kindly give us your opinion as to who has jurisdiction and the responsibility for the enforcement of state traffic laws, under Rule No. 45, Section 479 of the General Code.

If this jurisdiction rests with, and the responsibility rests upon, the Director of Public Works, can said Director delegate this authority to the sheriff of Fairfield County, over that portion of Buckeye Lake which lies within Fairfield County, or to the sheriff of any county within which a lake or part thereof, having been dedicated as a public park, is located?”

Section 154-40 of the General Code provides that the Department of Public Works shall have all powers and perform all duties vested by law in the Superintendent of Public Works.