

language appears in the habendum and warranty clauses. I would suggest that said deed be redrafted and re-executed to convey to "The State of Ohio, its successors and assigns," similar changes being made in the habendum and warranty clauses. It might also be well in redrafting said deed to except from the premises described the portions of surveys numbers 14158 and 14598 which extend into, and lie within, the boundaries of survey number 15880.

The encumbrance estimate bears the certification of the director of finance under date of June 1, 1927, and appears to be in proper legal form.

I am returning herewith abstract of title, warranty deed, encumbrance estimate and other papers submitted in this connection.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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1070.

APPROVAL, BONDS OF FRANKLIN TOWNSHIP RURAL SCHOOL DISTRICT, MONROE COUNTY, \$16,000.00.

COLUMBUS, OHIO, September 28, 1927.

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

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1071.

APPROVAL, FINAL RESOLUTION ON ROAD IMPROVEMENT IN JEFFERSON COUNTY, OHIO.

COLUMBUS, OHIO, September 28, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

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1072.

SPECIAL COUNSEL—EMPLOYMENT AND ASSIGNMENT TO HIGHWAY DEPARTMENT.

SYLLABUS:

*Employment of a special counsel by the attorney general and his assignment to the department of highways and public works cannot be made so as to authorize*

*payment of the compensation of such employe out of the appropriations made to such department by the 87th General Assembly.*

COLUMBUS, OHIO, September 28, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date as follows:

“The volume of legal work in connection with the operations of this Department is growing to such an extent, due to the amount of property condemnation suits and grade elimination projects, that in my opinion it will be necessary for us to have additional legal service. Under the new highway law, which goes into effect the first Monday of January, 1928, additional duties in connection with the purchase of right-of-way for new construction are imposed upon the Department.

My suggestion would be that one additional attorney be employed to be assigned exclusively to this department with quarters in our offices. This attorney, however, should have the sanction and authority of the office of the Attorney General, and, of course, would report to you.

Realizing that it may be impossible to reimburse him for his services from the appropriation to your department, I believe under authority of law that he can be paid from Maintenance or Construction Funds or both appropriated for highway improvements. In this connection I am referring you to Section 1182 of the General Code from which I will quote.

‘The state highway commissioner may appoint as many additional clerks or stenographers and such engineers, superintendents, inspectors and *other employes*, and may purchase, maintain and operate such equipment within the limits of appropriations as he may consider necessary to carry out the provisions of this chapter.’

It is very desirable that this attorney be employed at as early a date as possible and your prompt advice will therefore be appreciated.”

You are undoubtedly aware of the provisions of Section 333 of the General Code, the language of which is as follows:

“The attorney general shall be the chief law officer for the state and all its departments. No state officer, board, or the head of a department or institution of the state shall employ, or be represented by, other counsel or attorneys-at-law. The attorney general shall appear for the state in the trial and argument of all civil and criminal causes in the supreme court in which the state may be directly or indirectly interested. When required by the governor or the general assembly, he shall appear for the state in any court or tribunal in a cause in which the state is a party, or in which the state is directly interested. Upon the written request of the governor, he shall prosecute any person indicted for a crime.”

The intention is here clearly expressed to make the attorney general the chief law officer of all departments of the state and I feel there is no doubt as to the lack of authority of any department to employ other counsel in the absence of statutory

authority so specific as to constitute an exception to this general provision of law. I find no specific authority for the employment of legal counsel in the statutes relative to the Department of Highways and Public Works and, in fact, in your inquiry you evidently recognize that it would be necessary for the proposed additional legal counsel to be appointed by the Attorney General.

This position is undoubtedly correct in view of the language of the statute which has already received this interpretation in Opinions of the Attorney General for 1917, at page 633. The Attorney General there had under consideration the validity of a voucher in payment of an attorney at law appointed by the state fire marshal under assumed authority of the 1915 appropriation bill which contained an item for the following purposes:

"Fees, mileage and maintenance of witnesses, township clerks, special attorneys and stenographers."

The state fire marshal assumed that this appropriation authorized the employment of an attorney. The conclusion of my predecessor is sufficiently set forth in the syllabus of that opinion, which is as follows:

"Despite the provisions of the 1915 appropriation bill, the state fire marshal has no authority to appoint or employ legal counsel or attorneys at law (Sec. 333, G. C.); and a person appointed or employed by him to render legal service, as such, may not be paid out of such appropriation, though the services actually rendered be such as might lawfully have been rendered by an assistant fire marshal."

Your inquiry, however, is whether an attorney may not be assigned from this office to your department and be paid from maintenance or construction funds appropriated for highway improvements. In this connection you call my attention to Section 1182 of the General Code, from which you quote and which I will not repeat here. It is sufficient to say that the employes therein authorized are, as you will note, to be appointed by the state highway commissioner. Under the rule announced in the opinion to which I have just referred, this authority to appoint other employes can scarcely be construed to include the appointment of attorneys, in view of the provisions of Section 333 of the General Code.

As you suggest, the funds available to this department under the general appropriation act of the 87th General Assembly are insufficient to permit me to employ and pay from those funds an additional special counsel to be assigned exclusively to your department. In the consideration of your question, it is well to bear in mind that the employment of special counsel by the Attorney General is governed by Section 336 of the General Code, which is as follows:

"If, in his opinion, the interests of the state require it, the Attorney General may appoint special counsel to represent the state in civil actions, criminal prosecutions or other proceedings in which the state is a party or directly interested. Such special counsel shall be paid for their services from funds appropriated by the general assembly for that purpose."

You will observe particularly the last sentence of this section. By reference to the general appropriation act of the 87th General Assembly, under the heading "ATTORNEY GENERAL— Personal Service, A 3 Unclassified" the item of "Special Counsel" is found.

It is obvious that this appropriation has been made by the legislature in accordance with the provisions of the last sentence of Section 336 of the General Code above quoted. This fund being insufficient, the question remains whether or not the legislature has indicated with sufficient clarity any other funds which may be available for the payment of special counsel appointed by the Attorney General. In the absence of specific language, I feel unwarranted in holding that the compensation of employes of this department, or any other department, may be paid from appropriations made to departments other than that by which they are employed.

It is well to bear in mind that in one instance at least the legislature has had in mind a similar situation and has made specific provision therefor. I refer to the employment of a special counsel for the Public Utilities Commission. Section 497 of the General Code is as follows :

"The Attorney General shall be the legal advisor of the commission, but shall designate, subject to the approval of the governor, one or more of his special counsel, to perform the services and discharge the duties of attorney to the commission. Such specially designated counsel shall receive such salary as may be fixed by the commission and approved by the governor, such salary to be paid in the same manner as that of the members of the commission."

You will observe that, while the legislature has not in this instance departed from the general theory that the Attorney General shall be the chief legal officer of all state departments as announced in Section 333 of the General Code, yet it has provided another and different method for the payment of the salary of special counsel in this instance. In harmony with this section is found the appropriation to the division of public utilities, under "Personal Service—A 1, Attorney."

There is therefore a specific expression on the part of the legislature both in the general statute and the appropriation bill to the effect that the salary of this particular special counsel shall be paid otherwise than from the regular appropriation for special counsel.

From an examination of the sections of the code relating to the department of highways and public works, and the appropriations therefor found in the general appropriation act of the 87th General Assembly no similar specific provisions are found. Your suggestion is that the compensation of the additional special counsel may be paid from the appropriation for maintenance or construction.

An examination of the appropriations just mentioned fails to reveal any specific mention of the employment of attorneys. If such specific mention were present, then possibly certain of the language employed by the Attorney General in the opinion from which I have heretofore quoted would be applicable. As stated upon page 635 of that opinion, after reference to Section 336 of the General Code :

"This statute does not in terms require that the sum appropriated to pay special counsel appointed by the Attorney General under this section shall be appropriated to the department of the Attorney General. The legislature has it within its power without violating this section, to apportion the appropriations as it sees fit, among the several departments.

In other words, however impractical such a scheme might be, it is conceivable that the legislature might wish to have special counsel, appointed by the Attorney General and assigned to a particular department, paid out of an appropriation account charged against that department, instead of against the Attorney General's office, and yet to preserve the Attorney

General's statutory power to appoint and not do violence to the prohibition against the employment of attorneys at law by other state officers and departments."

If, therefore, there were specific mention of the employment of attorneys in connection with the appropriations to which you refer, the employment by this office of an additional attorney to be paid from such appropriations might possibly be sustained.

Likewise, if there were in the laws relating to your department a provision similar to Section 497 of the General Code directing specifically how the payment of an additional special counsel should be made, it very properly could be held that payment out of the appropriations to which you refer would be justified.

In view of the fact that the legislature has failed to indicate specifically, either by general law or in the appropriation act, that authority exists for the payment of the compensation of a special counsel for the department of highways and public works otherwise than from the appropriation specifically made for special counsel, I do not feel that I am justified in approving such an employment.

I am therefore compelled to the conclusion that the employment of a special counsel by the Attorney General and his assignment to the Department of Highways and Public Works cannot be made so as to authorize payment of the compensation of such employe out of the appropriations made to such department by the 87th General Assembly.

However, if for the reasons stated in your letter you are of the opinion that it is necessary for me to designate an additional special counsel in order that the legal work of your department may be adequately taken care of, upon receipt of a letter from you to that effect I will make application to the Emergency Board, under Section 2313, General Code, which provides in part that

"In case of any deficiency in any of the appropriations for the expenses of an institution, department or commission of the state for any biennial period, \* \* \* the officers of such department \* \* \* may make application to the emergency board for authority to create obligations within the scope of the purpose for which such appropriations were made or to expend money not specifically provided for by law \* \* \* ",

for an allowance sufficient to enable me to employ such counsel.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1073.

INITIATIVE AND REFERENDUM—PRINTED COPIES OF INITIATED AND REFERRED LAWS AND ARGUMENTS THEREON SUBMITTED TO PEOPLE—COST OF PRINTING AND MAILING—ADDITIONAL HELP.

**SYLLABUS:**

1. *Section 1g, Article II of the Constitution peremptorily commands the Secretary of State to cause to be printed a true copy of all proposed laws to be submitted to the*