

schools of the district, nor would it be proper for a board of education to construct buildings for the ostensible purpose of permitting their use for purposes other than the promotion of the regularly authorized district schools.

In specific answer to your first question I am of the opinion that a college may not be established and maintained in connection with the public school system of the state, unless the same be done by the state Legislature, and that boards of education as such, have no authority to establish and maintain schools of higher grade than high schools, whether the same are maintained from public school funds or from tuition receipts received from the attendants at the school, except as city and county boards of education may be authorized to establish normal schools.

In view of the answer which I have given to your first question, I do not deem it necessary to answer the second, third and fourth question.

In answer to the fifth question, I am of the opinion that it is lawful for a board of education to permit the use of its school buildings by an established university for conducting schools therein, so long as the use by the university does not interfere with the primary purpose for which the buildings are constructed, that is, for use in connection with the maintenance of the public schools of the district.

Respectfully,
 EDWARD C. TURNER,
Attorney-General.

2018.

MUNICIPAL COURT—"SUITABLE ACCOMMODATIONS"—WHAT CONSTITUTES SAME—MADISON TOWNSHIP, RICHLAND COUNTY, BEAR EXPENSE EQUALLY—NO AUTHORITY FOR MADISON TOWNSHIP TRUSTEES TO ISSUE BONDS TO PAY FOR ACCOMMODATIONS.

SYLLABUS:

1. *Section 1579-1023, General Code, does not authorize the trustees of the township of Madison, Richland County, Ohio, to issue bonds to provide money in order that such trustees may comply with the provisions of Section 1579-1019, General Code, to the effect that the "council of the city of Mansfield and trustees of the township of Madison shall provide suitable accommodations for the municipal court and its officers."*
2. *What constitutes suitable accommodations, as these words are used in Section 1579-1019, General Code, is a matter within the discretion of the council of the city of Mansfield and the trustees of Madison Township.*
3. *The cost of providing "suitable accommodations" for the municipal court of the city of Mansfield should be borne by the city of Mansfield and the township of Madison, Richland County, Ohio, in equal proportions; although should the city council and the township trustees enter into an agreement, providing that such cost be paid upon a different basis, payments made by such subdivisions in accordance with such agreement would not constitute an unwarranted use of public funds.*
4. *In pro rating between the city and the township, the cost of providing suitable accommodations for the municipal court of the city of Mansfield, the rental value of any permanent structure belonging to either one of the political subdivisions, used as a part of the "suitable accommodations", should be determined by the city council and township*

trustees. Any capital expenditures necessary to improve such a structure so as to make it suitable for use as quarters for the municipal court should be paid by the subdivision owning the building.

COLUMBUS, OHIO, April 26, 1928.

HON. GEORGE H. BLECKER, Prosecuting Attorney, Mansfield, Ohio.

DEAR SIR:—This will acknowledge your letter of recent date, which reads:

“At the last session of the Legislature there was established for the City of Mansfield and the Township of Madison, Richland County, Ohio, a Municipal Court, Section numbers allotted to it are 1579–978 and following.

A couple of questions have arisen out of the passage of this act for which we would like to have an opinion:

First: Section 1579–1019 provides:

“That the council of the city of Mansfield and the trustees of the township of Madison shall provide suitable accommodations for the municipal court and its officers, including a private room for said judge and also jurymen.”

This section then provides other duties which do not involve the trustees of Madison Township whom I represent by law.

In our city we have a City Building which was only built three or four years ago. They have a Police Court Room which was formerly used by the Mayor for the hearing of Police Court and which is now used by the Municipal Judge, but, they also, at the time they built this building, left the third floor partially unfinished, intending that some day this should be fitted for Council Chamber and for other offices that they might necessarily put there. The city now has proposed that they finish this third floor and put the Municipal Court room, Judge's and Clerk's offices in this place and ask the Madison Township Trustees to pay a portion of the cost for finishing same and have even suggested that the Trustees pay more than fifty per cent for the reason they have the ground and walls, etc. and as this section says that—“The City and Township Trustees shall do it,” they contend that that means half for each one—but, what is half is something that should be determined by agreement between the parties.

You will see further in Section 1579–1023, how the funds may be levied and provided. Therefore, the first question I desire an opinion upon is whether the Township Trustees would be authorized to issue bonds under this section to assist in providing accommodations in this Municipal building.

Second. The Municipal Court, while their accommodations are probably not as handy as they would like to have them at present, nevertheless they have an office for the Clerk and the Judge and are using the old court room and have been put to no new expense in providing quarters. So, I am desirous also of knowing whether they can charge the Township Trustees any rent for the use of these afore-said quarters. As you will see by this act, the Township Trustees receive no benefit from the court in as far as fines or costs are concerned.

If you should hold that the Township Trustees may pay a portion for the improvement of this building or providing quarters, should they pay one-half or what would be their share of the expense?”

On April 21, 1927 (112 v. 323), the Legislature passed an act entitled:

“An Act—To provide for the establishment of a municipal court in and for the city of Mansfield, and township of Madison, Richland County, Ohio.”

Section 42 thereof, now Section 1579-1019, General Code, provides:

"The council of the city of Mansfield and the trustees of the township of Madison shall provide suitable accommodations for the municipal court and its officers, including a private room for said judge and sufficient jury room. The council shall also provide for the use of the court the latest edition of the General Code of Ohio, complete sets of the reports of the supreme court and inferior courts of Ohio, and such other law books and publications as shall be deemed necessary, by the municipal judge, and shall furnish the necessary supplies, including telephones, stationery, furniture, heat, light and janitor service."

Section 43 thereof, now Section 1579-1023, General Code, reads as follows:

"For the purpose of providing the necessary funds to pay salaries, as stipulated in this act, and other expenses of the municipal court, the council of the city of Mansfield and the trustees of Madison Township are hereby authorized and required to levy an annual tax on all taxable property of the city of Mansfield and the township of Madison, which may be levied outside of all limitations now imposed by law, which when collected, as other taxes, shall be paid over to the treasury of the city of Mansfield and by him credited to the municipal court fund and until such time as levy and assessment can be made and paid into said municipal court fund, said salaries and other expenses may be paid out of the general funds of said city and township respectively, or said council and trustees may borrow a sufficient amount of money and place the same to the credit of said municipal court fund to pay said salaries and meet such expenses until said levy and assessment has been made, and the money has been paid into said municipal court fund, at which time said money borrowed or money taken from said general fund shall be returned."

Section 1579-1023, supra, authorizes and requires the council of the city of Mansfield and the trustees of Madison township to levy an annual tax on all taxable property of the city of Mansfield and the township of Madison in order to provide "the necessary funds to pay salaries, as stipulated in this act, and other expenses of the municipal court." The only "other expenses of the municipal court" required to be paid by the township of Madison for the municipal court of Mansfield are those arising from the mandatory duty of the township trustees, together with the council of the city of Mansfield, to "provide suitable accommodations for the municipal court and its officers, including a private room for said judge and sufficient jury room." (Section 1579-1019, General Code).

The method by which money shall be provided to pay the township's proportion of the salaries and, jointly with the city council, to provide suitable accommodations, as required by Section 1579-1019, is prescribed in Section 1579-1023, supra. This section does not authorize the trustees to issue bonds, and expressly provides how the required funds may be obtained, viz., by a tax levy on all the taxable property of the city and township, which may be levied outside of all limitations now imposed by law. Until such time as levy and assessment can be made, provision is made that, (1) the necessary money may be paid out of the general funds of the city and township, or (2) the city council and township trustees may borrow a sufficient amount of money for the expenses in question.

By the express terms of Section 1579-1023, supra, the city and township have authority to levy an annual tax and until such levy and assessment can be made these political subdivisions have authority to pay the money required out of their respective

general funds or to borrow sufficient money in anticipation of such levy and assessment. If the Legislature had intended to authorize city and township, or either of them, to issue bonds, such authority would have undoubtedly been expressly granted; and without specific statutory authority it is well settled that bonds may not be issued by such subdivisions.

What constitutes "suitable accommodations for the municipal court and its officers" within the meaning of Section 1579-1019, *supra*, is solely within the discretion of the city council and the board of trustees. The Legislature has imposed the mandatory duty upon these bodies to provide such "suitable accommodations" but has left the matter as to what constitutes "suitable accommodations" to the discretion and sound judgment of these two groups.

I see no legal objection if, in the exercise of their discretion and good judgment, the council of the city of Mansfield and the trustees of the township of Madison reach an agreement whereby the city of Mansfield will furnish and equip "suitable accommodations for the municipal court" and the trustees, in order to bear their burden of the expense thereof, agree to pay an annual rental. The question of determining what is the fair rental value of such quarters is within the good judgment and sound discretion of the city council and the township trustees.

You suggest that the city council feels that the township trustees should bear a portion of the cost of finishing the quarters intended to be used which are located in the City Hall. Since this building is the property of the city, any capital expenditures, required in improving the building so as to make it suitable for use as municipal court rooms, should be borne by the city and the value of such improvements should be taken into consideration in determining what is a fair rental value, which rental should be borne as hereinafter pointed out.

It will be observed from the provisions of Section 1579-1019, *supra*, that the council of the city of Mansfield is required to furnish for the use of the municipal court necessary law books and publications, as well as other necessary supplies, including telephones, stationery, furniture, heat, light and janitor service. The "suitable accommodations" for the court, however, are to be provided *jointly* by the council of the city and the trustees of Madison Township.

With reference to the salary of the municipal judge, the Legislature has determined that the funds to pay the same shall be provided by Richland County, Madison Township and the city of Mansfield and has definitely fixed the amount to be paid by each of these subdivisions. See Section 1579-980, General Code, which reads as follows:

"Said municipal judge shall receive compensation, payable out of the treasury of Richland County, in the sum of fifteen hundred dollars (\$1500.00) per annum, payable in quarterly installments, as the county commissioners may prescribe and out of the treasury of Madison Township, five hundred dollars (\$500.00) per annum, payable in quarterly installments, as the township trustees may prescribe, and further compensation, of two thousand dollars (\$2000.00) per annum, payable in monthly installments out of the treasury of the city of Mansfield as the council thereof may prescribe."

The salary of the clerk of the municipal court, however, is to be paid solely by the city of Mansfield, the first sentence of Section 1579-1015, General Code, providing that:

"There shall be a clerk of the municipal court appointed by the municipal judge to serve during his pleasure, who shall receive such annual salary of eight-hundred dollars, payable monthly out of the city treasury as council may prescribe, * * *."

The salary of the bailiff is also to be paid by the city of Mansfield, it being provided in Section 1579-1017, that "such bailiff shall receive such compensation, nine hundred dollars per annum, payable out of the treasury of the city of Mansfield, in monthly installments, as the council may prescribe."

Section 1579-1021, General Code, provides that the city solicitor of Mansfield shall be the prosecuting attorney of the municipal court and that he may designate such number of assistant prosecutors as the city council may authorize, this section further providing that: "The persons thus appointed shall receive for their services in city cases such salaries as the council may prescribe." This same section further provides that the city council by ordinance shall provide for one or more official stenographers and fix their compensation "and provide for the payment of the same out of the city treasury."

From the above resume it will be seen that while the Legislature has directed that the compensation of certain employes connected with the municipal court shall be paid solely by the city of Mansfield, it has prescribed that the salary of the judge shall be paid by Richland County, Madison Township, and the city, and has definitely fixed the proportion to be paid by each. And while the Legislature has provided that certain expenses shall be paid solely by the city of Mansfield, it has placed the duty of providing suitable accommodations upon both the city and township, but has failed expressly to specify in what proportion this latter expense shall be paid by the two subdivisions concerned.

In most instances where the Legislature directs the taking of joint action by the officials of two or more taxing subdivisions, either specific provision is made as to how the expenses incident to such action is to be pro rated between the taxing subdivisions, as is done in Section 1579-1019, *supra*, or authority is given for the division of such expenses equitably, or as may be agreed upon by the officials in charge of the work. Examples of provisions of the kind last mentioned may be found in the highway laws, where joint action of the county commissioners and the Director of Highways in the improvement of roads, the abolishment of railway grade crossings, and the construction and reconstruction of bridges is provided for. See Sections 1181 et seq., General Code (112 v. 469).

In the instant case it is significant that as to all expenses of the court including salaries, with the exception *only* of the expense entailed in providing suitable accommodations, specific provision is made as to the proportions to be borne by the county, city and township. Whether or not the failure of the Legislature to provide how the cost of providing "suitable accommodations" for the municipal court was to be divided was inadvertent cannot, of course, be determined. The statute must be applied as it was enacted.

It cannot be said that the division of the cost of furnishing accommodations for the court should be left to the agreement of the officials of the two subdivisions, since, had this been intended, the Legislature would probably have expressly so provided. And the fact that in other cases, as above pointed out, such provisions were made in statutes relating to other subjects enacted by the same Legislature, seems significant in this connection. This being true, since the Legislature has placed the duty upon the township and city jointly to bear the expense of providing suitable quarters, and has not provided the proportion to be paid by each subdivision, it would seem to follow that it was intended that this expense should be *equally* borne by these two subdivisions.

I do not believe, however, that it is necessary to go so far as to say that, if the proper officials of the township and city should agree to pay this particular expense on a different basis, payment in accordance with such an agreement would be unauthorized. That is to say, the statute being silent in this respect, should the township trustees and city council reach an agreement whereby either the township or the city is to pay more than an equal part of the expense entailed in providing the necessary accommodations, I do not believe that payment on such a basis would be an unwarranted use of

public funds. However, in the absence of any such agreement, or in the event the township trustees and city council are unable to reach an agreement, it is my opinion that the expense in question must be paid equally by the township and city.

Summarizing, and answering your questions specifically, it is my opinion that:

1. Section 1579-1023, General Code, does not authorize the trustees of the township of Madison, Richland County, Ohio, to issue bonds to provide money in order that such trustees may comply with the provisions of Section 1579-1019, General Code, to the effect that the "council of the city of Mansfield and trustees of the township of Madison shall provide suitable accommodations for the municipal court and its officers."

2. What constitutes suitable accommodations, as these words are used in Section 1579-1019, General Code, is a matter solely within the discretion of the council of the city of Mansfield and the trustees of Madison Township.

3. The cost of providing "suitable accommodations" for the municipal court of the city of Mansfield should be borne by the city of Mansfield and the township of Madison in equal proportions; although should the city council and the township trustees enter into an agreement, providing that such cost be paid upon a different basis, payments made by such subdivisions in accordance with such agreement would not constitute an unwarranted use of public funds.

4. In pro rating between the city and the township, the cost of providing suitable accommodations for the municipal court of the city of Mansfield, the rental value of any permanent structure belonging to either one of the political subdivisions, used as a part of the "suitable accommodations", should be determined by the city council and township trustees. Any capital expenditures necessary to improve such a structure so as to make it suitable for use as quarters for the municipal court should be paid by the subdivision owning the building.

Respectfully,
EDWARD C. TURNER,
Attorney-General.

2019.

SHERIFF ALLOWANCE FOR USE OF PRIVATE AUTOMOBILE.

SYLLABUS:

Questions with respect to the allowance to a sheriff for expenses incurred in the use of his private automobile discussed.

COLUMBUS, OHIO, April 26, 1928.

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

GENTLEMEN:—This will acknowledge your recent communication in which you ask my opinion with respect to several questions contained in a letter from one of your examiners. All of the questions relate to the allowance to a sheriff of his expenses in connection with the performance of his official duties, more particularly with respect to the use of his own private automobile in the performance of such duties. Since this general subject has heretofore been recently under consideration by this office, it is perhaps advisable, at the outset, to quote the language used in the previous opinion, insofar as it is pertinent to the questions here involved. In opinion No. 251, dated March 29, 1927, the following language is found: