

the fifteen mill limitation to pay them as provided in Section 5625-21, General Code.

Specifically answering your question, I am of the opinion that a subdivision should include in the general levy for current expenses the amount required for the payment of final judgments and that such levy is within the fifteen mill limitation, and further that the annual tax budget prepared by the taxing authority of the subdivision must, under Section 5625-21, General Code, show the amounts required to pay final judgments. I am further of the opinion that if the judgments sought to be paid were rendered against the subdivision in actions for personal injuries or were based on other non-contractual obligations, then, and in that event, bonds may be issued to pay such final judgments without a vote of the electors as provided in the Uniform Bond Act.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1813.

APPROVAL, LEASE FOR OFFICE ROOMS FOR USE OF THE STATE
FIRE MARSHAL IN THE FIRST NATIONAL BUILDING, COLUMBUS,
OHIO.

COLUMBUS, OHIO, April 25, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a lease granting to you as Superintendent of Public Works, for the use of the Department of Commerce (State Fire Marshal), certain office rooms as follows:

Lease from the First Citizens Trust Company of Columbus, Ohio, for Rooms numbers 410 to 420, inclusive, in the First National Building, Columbus, Ohio. This lease is for a term of one year, beginning on the first day of May, 1930, and ending on the thirtieth day of April, 1931, by the terms of which the State will be required to pay three hundred and seventy-five dollars (\$375.00) per month on the first day of each and every month, in advance.

You have also submitted encumbrance estimate No. 483, signed by the Director of Finance, made in pursuance of Section 2288-2, General Code.

You have further submitted a certificate of a directors' meeting, showing that the president of said company was authorized to enter into this lease for the company.

Finding said lease in proper legal form, I hereby approve it as to form, and return it herewith, together with all other papers submitted in connection therewith.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1814.

PREPARATION OF LEASE—DUTY OF PROSECUTING ATTORNEY TO
DRAFT LEASE FOR TOWNSHIP HALL NOT NEEDED FOR TOWNSHIP
PURPOSES WITHOUT ADDITIONAL COMPENSATION.

SYLLABUS:

It is a part of the official duties of a prosecuting attorney to prepare a lease for the leasing of a portion of a township hall within the county, not needed for township purposes, when called upon to do so by the board of trustees of the township wherein the hall is located,

and he is required to do so without compensation in addition to his regular salary. The township trustees cannot legally pay him any additional compensation for the performance of said work.

COLUMBUS, OHIO, April 26, 1930.

HON. C. G. L. YEARICK, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“The Board of Township Trustees of Granville Township, Licking County, Ohio, has asked the undersigned, as Prosecuting Attorney, to draft an instrument of lease for that portion of their township house, erected by a vote of the people, that is not used for strictly township purposes.

Sec. 2917 of the General Code, provides that the Prosecuting Attorney shall be the legal adviser for all township officers, and that no such officer may employ other counsel or attorney except on the order of the township trustees duly entered upon their journal, in which the compensation to be paid for such legal services shall be fixed, such compensation to be paid from the township funds.

In this connection, two questions arise, with reference to which the benefit of your opinion is respectfully requested:

1. Is the preparation of this lease, involving a number of conferences between lessor and lessee, as well as the execution thereof, a duty properly devolving upon the Prosecuting Attorney under this section of the General Code?

2. If it is not such a duty so devolving upon him, may the township trustees, by order duly entered upon their journal, employ the Prosecuting Attorney for such service, and pay him compensation for such legal services, equal or proportionable to that which they would pay any other attorney?”

Section 2917, General Code, reads as follows:

“The prosecuting attorney shall be the legal adviser of the county commissioners and all other county officers and county boards and any of them may require of him written opinions or instructions in matters connected with their official duties. He shall prosecute and defend all suits and actions which any such officer or board may direct or to which it is a party, and no county officer may employ other counsel or attorney at the expense of the county except as provided in section twenty-four hundred and twelve. He shall be the legal adviser for all township officers, and no such officer may employ other counsel or attorney except on the order of the township trustees duly entered upon their journal, in which the compensation to be paid for such legal services shall be fixed. Such compensation shall be paid from the township fund.”

From the terms of the foregoing statute, it clearly appears that a prosecuting attorney is charged with the duty of giving legal advice to all township officers with reference to their public duties, if they choose to call upon him for such advice. The question raised by your inquiry is whether or not the statutory requirements to be the legal adviser of all township officers includes the drawing of necessary legal papers, such as contracts and the like, which may be necessary to have drawn in connection with the performing of the public duties of said township officers.

By the terms of Section 3397, General Code, township trustees are authorized to lease so much of the township hall as may not be needed for township purposes, and in

so doing may likely need some legal advice in connection with the making of the lease, just as a private individual often finds it necessary to procure the services of an attorney in connection with the making of leases. Just what is included within the term "legal advice" is not fixed by statute, nor is the statute definite as to just what services of a prosecuting attorney township officers are entitled to in connection with the transaction of the public business of the township. Soon after this statute was enacted in its present form in 1906, the Attorney General was asked his opinion as to whether or not, under the terms of the statute, the prosecuting attorney was required to conduct litigation on behalf of the township officers. In his reply, which is found in the Annual Report of the Attorney General for 1908, at page 287, he held that it was the official duty of the prosecuting attorney to render to township trustees his services in connection with any litigation the trustees might have, and that he was required to do so without additional compensation.

The statute seems to contemplate providing for the township trustees a person to perform any and all legal services that such trustees may need to have performed, and I believe the drawing of legal papers such as contracts, leases and deeds and the like, are as much legal services as the giving of legal advice, and am therefore of the opinion that if the township trustees require the prosecuting attorney to prepare a lease for the leasing of a portion of the township hall not needed for township purposes, it becomes the duty of the prosecuting attorney to prepare such lease as a part of his official duties for which his salary is fixed, and that he cannot be paid any other or further compensation from the township treasury for the performing of those services.

Under the terms of the statute, the trustees may, if they wish, employ another attorney, in which event, they would, of course, necessarily be expected to pay him the usual compensation for similar services, but if the services are rendered by the prosecuting attorney, he performs them as a part of his official duties, and he cannot legally be paid anything in addition thereto.

A somewhat similar question was passed upon by a former attorney general with reference to the right of a city board of education to pay a part of a city solicitor's salary for services rendered to them by said solicitor. By force of the statute, the city solicitor of a city is constituted the legal adviser and attorney for the board of education of the city school district which lies within said city, and it was held:

"A city board of education may not legally contribute a part of the city solicitor's salary for services rendered to them by said solicitor which he is required to perform as a part of his duties. The same would be true of his assistant.

"However, it has been held that when the solicitor performs work for the board of education which is no part of his duties in his official capacity, he may be compensated therefor."

Opinions of the Attorney General for 1926, page 555.

A question was submitted to me some time ago by the Bureau of Inspection and Supervision of Public Offices, involving substantially this same principle, in response to which was rendered Opinion No. 297 under date of April 12, 1929, wherein it was held as stated in the syllabus:

"1. The trustees of a township may not legally pay additional compensation to the prosecuting attorney of the county to prepare legislation for the construction of a township road.

2. In the event the trustees of a township pay extra compensation for legal advice to a prosecuting attorney for such services, the same forms a proper basis for a finding of recovery by the Bureau of Inspection and Supervision of Public Offices."

It is well settled in this State that a public officer is not entitled to dual compensation for the performance of his public duties. In the case of *State ex rel Finlan et al.*, 11 O. C. C., N. S. 305, this principle is stated as follows:

“Public officers are not entitled to compensation in addition to their salary for services required of them by statute, unless the statute provides therefor in express terms.”

The statute here under consideration is clear, to the effect that “the prosecuting attorney * * * shall be the legal adviser for all township officers.”

The only possible contention that might be raised over the interpretation of the statute would arise over the meaning of the term “legal adviser.”

The limits of what is included within the term have never been fixed by the courts of Ohio nor has the term been positively defined by this office. In my former opinion, No. 297, referred to above, it was held to include the duty to prepare legislation for the construction of a township road. In common everyday usage, the term “legal adviser” is used as being practically synonymous with “attorney”, and I am of the opinion that the Legislature meant by the use of the term in Section 2917, supra, wherein it provided that the Prosecuting Attorney should be the legal adviser for all township officers, to use the term as it is generally understood, that is, to mean that the Prosecuting Attorney should act for the township trustees in the capacity of an attorney with respect to all matters where the trustees needed an attorney, whether to advise them, prepare legal documents for them, or to conduct litigation.

It will be observed that the statute does not authorize township trustees to employ the Prosecuting Attorney under any circumstances, but does provide that they may employ other counsel or attorney when the fact of such employment is duly entered upon their journal. The fact that they are authorized to employ *other* counsel or attorney, implies, in my opinion, that when they do not employ such other counsel or attorney, the Prosecuting Attorney is to be their counsel or attorney, and thus that the term “legal adviser”, as used in the statute, includes the work of a counsellor and of an attorney.

Under a statute in Kentucky, providing that a city council, prior to the election of a city attorney, shall fix his compensation, and that it shall be his duty to attend the meetings of council, advise it in all matters of litigation or legal proceedings and perform other duties required of him, an ordinance was passed fixing the salary of a city attorney and defining his duties, which required him to give legal advice to the mayor and other officers and boards of the city and also the board of education, and to “advise” the various boards, etc. It was held, under this statute and ordinance, that the word “advise” was used in its broad sense, meaning that the city attorney should be the legal adviser of the various boards of the city in legal proceedings, and that he was not therefore entitled to extra compensation for caring for litigation between the board of education and a schoolhouse contractor. *Board of Education of City of Ludlow vs. Ritchie*. 149 S. W., 985; 149 Ky., 674.

I am not unmindful of the fact that the salary of Prosecuting Attorneys in many counties is not large and is not commensurate with the work which they are required to do in their official capacity. Relief from this situation, however, must be had from the Legislature rather than through an attempted strained construction of the statutes.

In specific answer to your questions, I am of the opinion that it is a part of the official duties of a prosecuting attorney to prepare a lease for the leasing of a portion of a township hall within his county, not needed for township purposes, when called upon to do so by a board of township trustees, and that he is required to do so without compensation in addition to his regular salary. The township trustees cannot legally pay him any additional compensation for the performance of said work.

Respectfully,

GILBERT BETTMAN,

Attorney General.