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TRANSFER OF FUNDS—TURNKEY MAY NOT ACCEPT REWARD FOR INFORMATION LEADING TO THE ARREST AND CONVICTION OF ALLEGED MURDERER—PROHIBITION INSPECTOR MAY ACCEPT REWARD—COUNTY COMMISSIONERS NOT ENTITLED TO REFUND OF TAXES PAID ON GASOLINE.

SYLLABUS:

1. *Public officials may transfer funds under their control, except the proceeds or balances of special levies, loans or bond issues, from one fund to another upon application to the court of common pleas and the procuring of an order of court therefor as provided by Sections 2296, et seq., of the General Code of Ohio.*

2. *The keeper of a county jail, sometimes called the turnkey, who furnishes information leading to the arrest and conviction of an alleged murderer, is not entitled to any part of a reward which had been offered for such information.*

3. *A prohibition inspector appointed under authority of Section 6212-22 of the General Code of Ohio who complies with the terms of an offer for the payment of a reward for furnishing information leading to the arrest and conviction of an alleged murderer may claim such reward and the same may lawfully be paid to him.*

4. *County commissioners are not entitled to a refund of the taxes paid on motor vehicle fuels purchased from dealers, unless such fuels are used for purposes other than the propulsion of motor vehicles operated or intended to be operated, in whole or in part, upon the highways of the state, as provided in Section 9 of the gasoline excise tax law (Section 5534, General Code.)*

COLUMBUS, OHIO, April 6, 1927.

HON. HERMAN F. KRICKENBERGER, *Prosecuting Attorney, Darke County, Greenville, O.*

DEAR SIR:—This will acknowledge receipt of your recent communication in which you request my opinion in answer to three questions as follows:

“The first question is relative to the transfer of funds of a township, under the authority provided in Section 2296 of the General Code. The city of Greenville, in this county, is located in Greenville township. For the general purposes of the township, the property in the city of Greenville is taxed with the property outside of the city in said township, the taxes so collected being placed in the township’s general fund. As to the other funds of the township, viz. the poor fund, the cemetery fund and the road fund, the property within the city is not taxed. Under this state of facts, I would like to know whether or not it would be legal for the township trustees of Greenville township to transfer a part of the general fund to the road fund, provided, of course, such an order should be made by the court.

The second question I would like to present has to do with the payment of a reward by the county commissioners. The commissioners of this county offered a reward for any information leading to the arrest and conviction of an alleged murderer, and thereafter the murderer was apprehended, arrested and convicted. A number of Ohio state cases have held that a sheriff, deputy sheriff, policeman or any salaried officer of the law whose duty it is to apprehend criminals are not entitled to claim any such reward, and it so happens that in the case I am presenting, the persons who furnished the information are salaried officers, the one a state prohibition inspector, and the other a turnkey in a county jail. I would like to know whether, in the opinion of your office, these persons are such officers of the law as to not entitle them to share in the reward.

My third question involves the construction of Section 5534 of the General Code. This section provides for the refund of the two-cent tax on motor vehicle fuel, when said fuel is to be used for any purpose other than to propel motor vehicles operated or intended to be operated upon the highways of this state. In view of this provision, I will appreciate your opinion as to whether the county commissioners might be entitled to a refund of the tax paid on gasoline purchased for the county's tractors, trucks and road machinery which are used exclusively for the building, maintenance and repair of the highways."

Your questions will be disposed of in the order asked.

1. Your first inquiry goes to the question of whether or not it is legal for township trustees to transfer township funds from one fund to another, when as you say, "provided of course such an order should be made by the court."

I have no hesitancy in saying that no public official or anyone else can be charged with the doing of an illegal act when he follows the final orders of a court which have not been modified or reversed.

Whether or not a court would make an order for the transfer of funds under circumstances such as you have outlined in your inquiry involves consideration of Sections 2296, et seq., of the General Code.

Section 2296 provides as follows:

"The county commissioners, township trustees, the board of education of a school district, or the council, or other board having the legislative power of a municipality, may transfer public funds except the proceeds or balances of special levies, loans or bond issues, under their supervision, from one fund to another, or to a new fund created under their respective supervision, in the manner hereafter provided, which shall be in addition to all other procedure now provided by law."

Sections 2297, 2298 and 2299 of the General Code make provision for the procedure to be followed by county commissioners and other taxing authorities named in Section 2296, supra, in making application to the common pleas court for permission to make such transfer of funds as may be desired. Section 2300 provides for the transfer of such funds upon the finding of the court as follows:

"If, upon the hearing the court finds that the notice has been given as herein required, that the petition states sufficient facts, that there are good reasons, or that a necessity exists for the transfer, and that no injury will result therefrom, it shall grant the prayer of the petition and order the petitioners to make such transfer. The court may make an order for the reimbursement, in whole or in part, of the fund from which such transfer is made."

Sections 2301 and 2302 provide in substance that a copy of the findings of the court shall be certified by the clerk and entered on the records of the petitioning officers or board, and thereupon the petitioners may make the transfer of funds as directed in such order and that any person or persons who have filed objections to the petition may appeal such cause to the court of appeals and if so desired the case may be reviewed on error in the supreme court of the state.

The several funds which you have mentioned in your inquiry are all under the supervision of the township trustees but in reality these funds arise from tax levies made in two separate taxing districts the entire township being the taxing district for one and the part of the township outside of the municipality being the taxing district for the other. While the larger of course includes the former, it would seem to me the court would hesitate in transferring funds from the larger of the districts to

the smaller because the funds transferred really belong to tax payers who would receive no benefit from them after the transfer was made and I am of the opinion such an order of court might be changed on appeal unless provision was made for the reimbursement of the general fund to the extent of its depletion if such a transfer were made.

You will note that by the terms of Section 2300, *supra*, the court is given considerable latitude in the matter but should only make such an order when "no injury would result therefrom" and unless the court at the same time made an order for the reimbursement of the fund from which the transfer was made as the statute authorizes it to do, it would seem to me some injury would result in making such a transfer.

2. The question of whether or not public officials are entitled to receive rewards offered by county commissioners or other persons for the apprehension of criminals has been before the courts of Ohio in a number of cases.

Generally speaking, the detention, arrest and conviction of a felon or the discovery and return of stolen property by a public official, whose duty it is to apprehend criminals, is not a proper consideration to sustain a promise of reward because of the fact that it is his duty to apprehend and arrest such felons even though a reward had not been offered.

In the case of *Gilmore vs. Lewis*, 12 Ohio, 281 it was said by the court that a reward offered for the apprehension of a thief could not be claimed by a constable who arrested the thief by virtue of a warrant delivered to him for that purpose. And in the case of *Brown vs. Commissioners of Sandusky county*, 2 O. C. C. (N. S.) 381 a similar question was before the court and the court said in substance that it was contrary to public policy and the law of Ohio and of other states generally that an officer be paid a reward for the performance of an act which his duty as such officer required him to perform. The court in deciding this case referred to a decision of the Superior Court of Cincinnati in the case of *Rea vs. Smith*, 2 Han. 195. The plaintiff in that case was a sheriff of Indiana and had arrested a fugitive from justice from the state of Kentucky and brought suit for a reward that was offered by private individuals. The syllabus of that case reads as follows:

"A public officer whose duty it is to arrest all persons charged with or suspected of the commission of crime cannot claim any other or further remuneration for his services than the fees allowed by law. Whenever an officer makes an arrest he is supposed to be acting in his official capacity and where he performs the duty of sheriff believing he was acting within the authority derived from law the court will not allow him to change his relation and assume that of a private individual."

The question was also before the Supreme Court of Ohio in the case of *Somerset Bank vs. Edmonds*, 76 O. S. 396, in which case the syllabus is as follows:

"The public policy and sound morals alike forbid that a public officer should demand or receive for services performed by him in the discharge of official duties any other or further remuneration or reward than that prescribed and allowed by law."

A review of the authorities pertinent to this subject shows that if an officer is charged with the duty of apprehending the criminal for which a reward has been offered he cannot claim any share of the reward in the event that he complies with the terms of the offer of the reward. However, if it is not a part of his official duty to apprehend such criminal he then stands in the position of a private individual and if the circumstances are such that the reward could have been claimed by a private individual he may then claim the reward.

The two officials to whom you refer in your letter are a state prohibition inspector and the turnkey of a county jail.

State prohibition inspectors derive their authority as public officials from the provisions of law pertaining to the appointment of a Commissioner of Prohibition of Ohio and his deputies and inspectors. Section 6212-22 of the General Code of Ohio provides in part:

“* * * The commissioners of prohibition shall have authority to appoint not to exceed twenty regular inspectors who shall hold office at the pleasure of the commissioners and who shall have the power and authority herein provided.”

Section 6212-24 providing for the duties of such inspectors provides in part as follows:

“It shall be the duty of the commissioner, deputy and inspectors diligently to enforce laws of the state having to do with the prohibition of the liquor traffic, and exercise all powers herein conferred, provided, however, that nothing in this act contained shall in any manner relieve any local township, municipal, county or other state officer from responsibility for the enforcement of such laws.”

At no place is there any provision of law requiring prohibition inspectors to perform any duties other than those relating to the enforcement of the laws of the state having to do with the prohibition of the liquor traffic. However as a matter of practice many of these prohibition inspectors have also been appointed deputy sheriffs. But if such an inspector is not commissioned as a public officer other than the commission given to them as prohibition inspector he would not be charged with the duty of the apprehension and arrest of murderers, and I am therefore of the opinion that a prohibition inspector who is not clothed with any official authority other than that of prohibition inspector would be entitled to share in any reward that might be offered for the arrest and conviction of an alleged murderer if he should make the arrest and comply with the terms of the offer of the reward.

With reference to the other official, a turnkey in a county jail, there is no provision of law in the state of Ohio which provides for such an official that uses the word turnkey.

The duties of a county sheriff and his deputies are such that he would be charged with the apprehension and arrest of alleged murderers and of course neither the sheriff nor his deputies would be entitled to claim any reward that might be offered for the arrest and conviction of such persons.

The word “turnkey” as defined in the Standard Dictionary is, “one who has charge of the keys of prison doors; a keeper; a jailor.”

Section 3161 of the General Code provides as follows:

“The sheriff may appoint one of his deputies to be keeper of the jail.”

It is apparent from the provisions of this statute that the keeper of the jail, the turnkey as you refer to him, must necessarily be a deputy sheriff and for that reason it is a part of his duty to apprehend and arrest alleged murderers and he could therefore not share in any part of a reward that might be offered for the arrest and conviction of such alleged murderer.

3. Your third question has been answered in a former opinion of this department with which I am in full accord. This opinion may be found in the Opinions of the Attorney General for 1925 at page 260. The second section of the syllabus of this opinion reads as follows:

"There is no provision in said act for reimbursement of the state or its political subdivisions for the amount of the tax assessed and paid by the dealer in the event the state or its political subdivisions purchase motor vehicle fuel from a dealer, unless such fuels are used for other purposes than the propulsion of motor vehicles operated or intended to be operated, in whole or in part, upon the highways of the state, as provided in Section 9 of said act."

Answering your questions specifically, I am of the opinion that:

1. The township trustees of Greenville township may transfer a part of the general fund of such township to the road fund upon application to the Court of Common Pleas and the procuring of an order of such court for such a transfer, as provided in Sections 2296, et seq., of the General Code, which authorize the transfer by the township trustees of public funds under their supervision, except the proceeds of special levies, loans or bond issues when the procedure outlined in such sections is followed.

2. The keeper of a county jail, sometimes called the turnkey, who furnishes information leading to the arrest and conviction of an alleged murderer, may not lawfully claim a reward offered by the county commissioners for such information, but a prohibition inspector, appointed under authority of Section 6212-22 of the General Code, who complies with the terms of an offer of reward for information leading to the arrest and conviction of an alleged murderer, may claim such a reward and the same may lawfully be paid to him.

3. County commissioners are not entitled to a refund of the gasoline excise tax paid by them on motor vehicle fuels purchased from dealers, unless such fuels are used for purposes other than the propulsion of motor vehicles operated or intended to be operated, in whole or in part, upon the highways of the state, as provided in Section 9 of the gasoline excise tax law (Section 5534, General Code).

Respectfully,

EDWARD C. TURNER,

Attorney General.

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TREASURER OF STATE—HAS NO AUTHORITY TO APPOINT DEPUTIES
OUTSIDE OF CIVIL SERVICE.

SYLLABUS:

1. *The treasurer of the state of Ohio has no authority under the law to appoint a deputy or deputies who would be within the unclassified civil service of the state as provided in sub-section 9 of Section 486-8a, General Code.*

2. *It is within the province of the civil service commission in the first instance under the provision of sub-section 1 (b) of Section 486-8, General Code, to decide whether it is practicable to determine the merit and fitness of applicants for positions in the office of the treasurer of state by competitive examinations.*

COLUMBUS, OHIO, April 6, 1927.

HON. BERT B. BUCKLEY, *Treasurer of State, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your request for opinion under date of March 26, 1927, as follows: