

the premises stand, as heretofore pointed out. It is believed that said deeds have been properly executed and are sufficient, when properly delivered, to convey the interest of said grantors to the state. However, it is noted that Martie B. Yost and husband convey tract number three to the state and a deed is enclosed which conveys the interest of George M. Douglas and Mary Ruth Boardman to said premises to the said Martie B. Yost. This latter deed should be properly recorded to complete the record of the title to said premises in Martie B. Yost.

It is noted that no examination was made by the abstractor in any of the United States courts.

In accordance with your request the abstract, encumbrance estimates, and deeds are returned herewith.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

2563.

**AUTOMOBILES—EXPENSE OF GASOLINE, OIL, NECESSARY TIRES AND REPAIRS TO AUTOMOBILE OWNED BY PROBATION OFFICER AND USED EXCLUSIVELY FOR JUVENILE COURT WORK MAY BE PAID FROM COUNTY TREASURY—WHEN USED PARTIALLY FOR PERSONAL USE OF OWNER, EXPENSE PROPORTIONED.**

1. *The expense of gasoline and oil, and the necessary tires and repairs to an automobile owned by a probation officer, and used exclusively in carrying out the work of the juvenile court, may legally be paid from the county treasury under the provisions of section 1682 G. C.*

2. *In the event that such automobile is used partially for the work of the court, and partially for the personal use of the owner, separations of such uses must be made, as to determine proportionately the county's share of expense; otherwise, payment may not be made from the county treasury.*

COLUMBUS, OHIO, November 10, 1921.

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

GENTLEMEN:—Receipt is acknowledged of your letter of recent date reading as follows:

“You are respectfully requested to render this department your opinion upon the following questions:

1. May the expense of gasoline and oil and the necessary tires and repairs to an automobile owned by a probation officer and used exclusively in carrying out the work of the juvenile court be legally paid from the county treasury?

2. In the event that such automobile was used partially for the work of the court and partially for the personal use of the owner, may any part of the expense of tires and repairs be legally paid out of the county treasury?

We are enclosing herewith statement of Hon. Homer Z. Bostwick, judge of the juvenile court of Franklin county, and an opinion from the office of the prosecuting attorney, under which the judge has been

paying out of the county treasury the necessary expense of gasoline, oil, and the necessary tires to three automobiles."

The statement and opinion referred to in your letter read respectively as follows:

*Copy of statement:*

"Under an opinion rendered by the prosecuting attorney September 20, 1918, copy of which is attached, I have been allowing the expense of gasoline, oil, and the necessary tires and repairs to three automobiles owned by officers of the court and used exclusively in handling the work of the court. The legality of this opinion was inadvertently raised recently in connection with an adverse opinion furnished to the auditor of this county in the matter of purchase and operation of automobiles for his department.

Our automobiles are kept busy the entire day, reaching all sections of the county, and we frequently find it necessary to make use of them at night. All girls and women committed by this court to Delaware and Marysville respectively are taken by automobile; we are sending a great many children to the Bureau of Juvenile Research, baby camp, city hospitals, boarding homes, both in the city and out, and we very frequently find it necessary to bring large families of children to our detention home for disposition; the rescue homes, both colored and white, do not accept pregnant minors until they are about ready for delivery, and these are all removed by automobile. The greatest need for these automobiles, however, is in the rural districts in making official and unofficial investigations by the officers of the court. The work in the rural communities of the county has more than trebled in the past three years, and we have found the automobile an actual necessity in reaching the rural communities. Our court is handling approximately three hundred official and unofficial cases per month, and of this number I estimate that at least ten per cent come from the rural communities. These automobiles are also used for investigations, etc., in the mothers' pension department as well as emergency calls to the juvenile court.

For the fiscal year, ending August 31, 1921, the average monthly expense for the operation of these automobiles was \$39.06. The past arrangement, no doubt, has resulted in the saving of hundreds of dollars to the taxpayers.

If sections 1660, 1661, and 1682 cannot be construed to include the expense of gasoline, oil, tires and repairs, it will be necessary to abandon the use of these automobiles and we will be most seriously handicapped in our work. I am now paying two of the officers the maximum salary allowed by law, which amount is entirely inadequate for the upkeep of an automobile.

I will be pleased to have you advise me whether or not we may continue to pay the expense of gasoline, oil, tires and repairs of these three machines from the juvenile court fund."

*Copy of opinion:*

"I have your letter of September 14th in which you state that two of the probation officers of the juvenile court are operating automobiles owned by them personally in handling juvenile court work and ask whether it would be permissible for the county to furnish the

necessary gasoline, oil, etc., for the use of operating these automobiles.

In answer to your question, I note that sections 1660 and 1661 G. C. provide that summons, warrants, citations, subpoenas, and other writs of the juvenile judge may issue to a probation officer of a court or to the sheriff of the county, and the provisions of law relating to the subpoenaing of witnesses in criminal cases, shall apply in so far as they are applicable; and when a summons or warrant is issued to any such officer, the expense in pursuing and bringing the person named therein shall be paid by the county in the manner prescribed by law for the payment of deputies, assistants and other employes of county officers.

The sections of the statutes covering the payment of expenses incurred by the sheriff and his deputies more clearly corresponds to your case, and, while not materially different from the payment of the actual necessary expenses of other county officers and their deputies, will, I think, cover your case. The section to which I refer is section 2779 G. C. which provides in part:

'In addition to the compensation and salary herein provided, the county commissioners shall make allowances quarterly to each sheriff \* \* \* for his actual and necessary expense incurred and expended in pursuing or transporting persons accused or convicted of crime and offenses, in conveying and transferring persons to and from \* \* \* and all expenses of maintaining horses and vehicles necessary to the proper administration of the duties of his office. The county commissioners shall allow the sheriff his actual railroad fare and street car fare expended in subpoenaing witnesses in civil and criminal cases, and may allow his necessary livery hire for the proper administration of the duties of his office. \* \* \*'

This section received a judicial interpretation in the case of State ex rel. Sartain vs. Sayre, 12 O. N. P. 61, syllabus of which reads as follows:

'It is within the discretion of county commissioners to make an allowance to the sheriff for automobile hire incurred in and necessary to a proper administration of the duties of his office in the serving of writs and processes in pursuing or transporting persons who are wards of the state or are charged with crime.'

As the result of said opinion, it is established that the word 'vehicles' as used in the above statute, includes automobiles.

The question was also passed upon by the Attorney-General July 20, 1915, reported in volume 2, page 1286, wherein he said as follows:

'While section 2997 contains the word "maintaining" and does not contain the word "operating," it would undoubtedly follow that said section authorizes the allowance of all expenses incident to the use of automobiles in public business and would include oil and gasoline, as well as necessary repairing to tires and parts.

The county commissioners may, therefore, make allowance to the sheriff for the expense of maintaining and operating his automobile when used in the proper administration of the duties of his office \* \* \*. Just what proportion of the expense may be charged against public funds will depend upon the facts in each particular case and is more a matter of policy than of law.'

Section 1682, G. C. also provides:

'Fees and costs in all such cases with such sums as are necessary

for the incidental expenses of the court and its officers, and the costs of transportation of children to places to which they have been committed, shall be paid from the county treasury upon itemized vouchers certified to by the judge of the court.'

While I have not had the opportunity of reading the letter which you say the bureau of accounting wrote to Hon. Robbins Hunter, probate judge of Licking county, I think the section of the statutes above quoted in the light of the interpretation given them by the court and the attorney general would permit the commissioners to furnish the necessary gasoline, oil, etc., for the use of operating these automobiles. If the machines of which you speak are not used exclusively by the probation officers for public business, it will be necessary for the commissioners to make some arrangement for the division of the expense of maintaining and operating said machines, but, in no case, can such arrangements include any item of compensation for the use of said machines."

It is noted that the opinion of the prosecuting attorney, copy of which was enclosed with your communication, bases authority for the payment of the expense of the upkeep, repair, etc., of an automobile used for the transaction of official business by the juvenile court, upon the provisions of sections 2997, 1660, 1661 and 1682 G. C., also upon the authority of a former opinion of this department, namely, Opinion No. 625, found in Volume II, Opinions of Attorney-General for 1915,\*page 1276, and while the general conclusion of the prosecuting attorney may not be disagreed with, it is thought that while partial authority is discovered in the provisions of sections 2997, 1660 and 1661, by analogy at least, for the payment of the expenses of such an automobile used by the juvenile court, yet it would seem that the entire items of such an expense are not wholly covered by these sections, which apparently provide for the payments alone of expenses incurred in the service of certain specified writs issuing from such courts, and would not perhaps cover other items of expense incurred in the official transaction of the court's business, requiring execution, without the issuing of writs, summons, etc. It is believed, however, that section 1682 G. C. is pertinent to a discussion of your questions, and is quoted herewith:

"Fees and costs in all such cases with such sums as are necessary for the incidental expenses of the court and its officers, and the expense of transportation of children to places to which they have been committed, except the fees of the court and the fees and expenses of the sheriff and his deputies, shall be paid from the county treasury upon specifically itemized vouchers, verified by oath and certified to by judge of the court."

It would seem clear that this section expressly authorizes the payment from the county treasury of "such sums as are necessary for *the incidental expenses of the court and its officers,*" and since the probation officer mentioned in your inquiry, is obviously an officer of the juvenile court, it would follow that within the purview of this section, such a court officer may properly be reimbursed for the incidental expenses incurred by him in the transaction of his official duties, and that such expenses are payable from the county treasury in compliance with the provisions of this section.

While it may be noted that the probation officer in question, under the provisions of this section, is entitled to "incidental expenses" incurred in the

discharge of his official duties, the fact may not be overlooked that the court itself is equally authorized to incur such "incidental expenses" in the discharge of its duties, which in this instance may be inferred to include such legal expenses as are incurred by the probation officer, since it is not thought assumable that the juvenile court could properly function without the services of such an officer. It is thought to be properly concluded, therefore, that while such necessary and incidental expenses of the probation officer may be designated in the name of such officer, yet in the end, the same in fact may be said to be the expenses of the juvenile court.

In consideration of your first question it becomes pertinent to ascertain whether or not the expenses contemplated therein, are, or may be deemed such "incidental expenses" as to meet with the requirements of section 1682 G. C.

The Century Dictionary defines the word "incidental" as follows:

"1. Occurring, inseparably or fortuitously, in conjunction with something else usually of greater importance; of minor importance; occasional; casual; as incidental expenses."

Words and Phrases defines the word "incidental" as follows:

"'Incident' or 'incidental,' a thing necessarily dependent upon, appertaining to, or following another that is more worthy or principal. 'Incidental expenses' as used in appropriation bills to qualify the word expenses has a technical and well understood meaning. It is usual for congress to enumerate the principal classes of expenditure which they authorize, and then to make an appropriation for the minor disbursements incidental to any great business, which cannot well be foreseen, and which it would be useless to specify more accurately."

Applying such definitions to the words "necessary incidental expenses" as they occur in section 1682 G. C., it would seem to be reasonably concluded that any necessary expense, upon which the functioning of the court depended would properly be included within the meaning of the provisions of section 1682 G. C. as "incidental expenses."

Construing the section under consideration, a former opinion of the Attorney-General (1917 Opinions, Attorney-General, Vol. II, p. 1362) held in part as follows:

"Section 1682 of the General Code makes provision for the expenses of the probation officer, he being considered an officer of the juvenile court."

Also, quoting further from the body of the same opinion, the following appears:

"In an opinion to Hon. F. J. Bishop, prosecuting attorney, Jefferson county, Ohio, the Attorney-General on July 19, 1918 (1918 Atty.-Gen. Opin. Vol. 1, p. 998), held that the prosecuting attorney may be reimbursed, out of the fund provided by section 3004 G. C. for gasoline and oil paid for by him in connection with the operation of his own automobile upon official business. \* \* \* No reason is seen why a probation officer may not likewise use his own automobile in the course of the performance of his official duties and be reimbursed in

the manner provided by section 1682 G. C. for the expense of gasoline and oil paid for by him in connection with such use."

It is noted that the opinion cited and quoted from considers the purchase of oil and gasoline as an incidental expense, incurred in the official discharge of the officer's duty, and payment for which may properly be made from the county treasury, although it is observed that other incidental expenditures, if they may be so termed, such as repairing of tires or engine, or other items incidental to the upkeep of an automobile are not considered in the discussion of this opinion. It is not thought presumable, however, that the absence of such considerations may logically be taken to infer that oil and gasoline were especially to be favored above the other factors requisite to the operation or locomotion of an automobile. On the contrary, it is not believed that such an inference or demarkation as to automobile accessories may reasonably be made, since it would appear very obvious that wheels, tires, replacement and repairs of worn or broken parts are as essential to the operation or movement of the automobile as oil and gasoline, and without which it would be impossible to propel the automobile or enjoy the benefits of transportation afforded thereby.

Construing, therefore, the phrase "necessary incidental expenses" as occurring in the provisions of section 1682 G. C. it would seem apparent that the legislature had intended to provide for the payment of all "incidental expenses" which were necessary to effectually make operative the provisions of the juvenile act, and it would seem that reasonable transportation expenses, however accomplished, for the children and those persons contemplated by its provisions, would properly come within the intention and meaning of the phrase "necessary incidental expenses," as used in this section. Especially would this seem true when such section is given a liberal construction, which is expressly provided for by section 1683 G. C. immediately following. It is further noted that such a conclusion is in harmony with a former recent opinion of this department, to-wit, Opinion No. 781, Opinions of Attorney-General, 1919, Vol. II, page 1433.

In specific answer, therefore, to your first question, you are advised that the expense for oil, gasoline, and the necessary tires and repairs to an automobile used exclusively in carrying out the work of the juvenile court, may legally be paid from the county treasury, under the provisions of section 1682 G. C.

In answer to your second question, it would seem to logically follow that the expense of tires, repairs, etc., mentioned, when necessary for the transportation services of the juvenile court, or an officer thereof, may, when an official expense, be lawfully paid from the county treasury. When, however, such an expense is incurred privately by the court or an officer thereof in an unofficial capacity, it becomes self-evident that payment therefor is not provided for by law, and in event that the private and official uses of the automobile in question cannot be separated and definitely determined, it is not thought that any portion of the same may be legally payable from the county treasury.

It is thought that in those instances where there is contemplated officially and privately, the joint use of an automobile by a probation officer of the juvenile court, a definite arrangement or plan of operation should be devised, whereby it may be ascertained as to what portion of the time such automobile is used in an official capacity, in order that the lawful expense of operation thereof may proportionately be provided for; and it is further believed that under such circumstances the judge of the juvenile court would be the

proper person to supervise such an arrangement, since by the provisions of section 1682 G. C. he is required to verify such vouchers of expense.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

2564.

INHERITANCE TAX LAW—AMERICAN BIBLE SOCIETY—BEQUEST TO SAID SOCIETY EXEMPT FROM SAID TAX—BEQUEST TO COLLEGE LOCATED IN OHIO WHICH IS AN INSTITUTION “FOR PURPOSES OF PUBLIC CHARITY ONLY” IS EXEMPT FROM SAID TAX THROUGH BEQUEST GIVEN TO ESTABLISH “BIBLE CHAIR” THEREIN.

1. *On facts stated as to the extent of the activities of the American Bible Society conducted in the state of Ohio, HELD*

*That a bequest to such society, which is a New York corporation organized for the purpose of publishing and promoting a general circulation of the Holy Scriptures “without note or comment,” and which, without view to profit, distributes, at times gratuitously, copies of the King James and American Revised versions of the Scriptures, or portions of them, in different languages, is exempt from inheritance taxation in Ohio.*

2. *A bequest to a college located in Ohio, and which as an institution is one “for purposes of public charity only,” is exempt from taxation, though given for the purpose of establishing a “Bible chair” therein.*

COLUMBUS, OHIO, November 10, 1921.

*Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—The receipt of the commission's letter of October 20th, enclosing a copy of the constitution, charter and by-laws of the American Bible Society and a letter of its counsel addressed to the probate judge of Jackson county, is acknowledged. In connection with the enclosures the commission submits for the opinion of this department the following question:

The American Bible Society was organized in 1841 by act of the legislature of New York “for the purpose of publishing and promoting a general circulating of the Holy Scriptures without note or comment;” its activities, as disclosed by its constitution, charter and by-laws and as described in the letter of its counsel, consist solely of publishing, according to the King James' version or the American Revised version, copies of the Holy Scriptures in the English language and in numerous other languages, and in so publishing portions of the Bible, such as the New Testament and Psalms, on the one hand, and the Old Testament, on the other hand. Particular attention is called by counsel to the fact that the Old Testament is printed separately in Yiddish and in Hebrew for the purpose of being circulated among the Jews.

The books so published are circulated through district agents, traveling agents and colporteurs, who receive compensation for their services, and also through volunteers who receive no compensation. The