3467.

MORAL OBLIGATIONS—WHEN POLITICAL SUBDIVISIONS MAY ASSUME AND PAY—SPECIFIC CASE.

SYLLABUS:

A claim against a political subdivision, whether sounding in tort or contract, even though it may not be enforceable in a court of law, may be assumed and paid from the public funds of the subdivision as a moral obligation if it be shown that the claim is the outgrowth of circumstances or transactions whereby the public received some benefit, or the claimant suffered some loss or injury, which benefit or injury or loss, as the case may be, would constitute the basis of a strictly legal and enforceable claim against the subdivision, were it not that because of technical rules of law no recovery may be had.

COLUMBUS, OHIO, July 31, 1931.

HON. J. D. SEARS, *Prosecuting Attorney, Bucyrus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion with reference to the following:

> "A few years ago, prior to my administration as Prosecutor, the Board of County Commissioners enacted legislation for the improvement of a certain road, and pursuant thereto awarded a contract to make such improvement to a Mr. S., contractor. Subsequent to the awarding of the contract, and to the commencement of the work by the contractor, an injunction was granted against the continuation of said improvement. Said injunction was predicated on the failure of the Auditor to certify available funds. The injunction was sustained through the various courts, and the project was abandoned after Mr. S. had done approximately $1200.00 worth of work.
>
> Subsequent thereto, new legislation was enacted by the Commissioners, calling for the same improvement, and providing for the making of said improvement on force account. Another effort was made to enjoin the same, but the injunction failed, and the improvement was then completed on the second proceedings, and by force account.
>
> Mr. S., the contractor, under the original contract, now asserts a claim for the work which was actually performed by him, and the benefit of which, of course, the County received, inasmuch as the work did not have to be duplicated on the force account improvement.
>
> The claim seems to have merit in equity, if not in law, and the Commissioners are disposed to honor it if they can properly do so.
>
> Kindly let me have your opinion as to their authority to make this payment."

Your inquiry involves the questions of whether or not county commissioners may lawfully recognize and pay claims which are not strictly legal obligations in the sense that recovery could be had on them in a court of law, but which in conscience and in accordance with natural justice, should be paid, and if so, whether or not the claim of the contractor in question is such a claim.

It has long been recognized that public authorities, whether the state itself, or a political subdivision thereof, may pay not only legal claims but those of a moral

or equitable character as well. The difficult question is to determine what is and what is not such a claim as justifies its recognition and payment as a moral claim. Courts and textwriters have made many attempts to define a moral obligation and to designate the limitations within which such an obligation may be assumed and paid. None of these definitions is entirely satisfactory. Cooley, in his work on Taxation, Fourth Edition, page 184, defines a moral obligation as:

> "A duty which would be enforceable at law were it not for some positive rule which exempts the party in that particular instance from lawful liability."

In American and English Encyclopedia of Law, Volume 20, page 872, "moral obligation" is defined as follows:

> "Moral obligation means no more than a legal liabilty suspended or barred in some technical way short of a substantial satisfaction * * It is that imperative duty which would be enforced by law were it not for some positive rule which, with a view to general benefit, exempts the party in that particular instance from legal liability."

This definition is cited with approval and applied in the case of *Longstreet* v. *City of Philadelphia,* 245 Pa. St., 233; 91 Atl. 667. In a New York case, *People* v. *Westchester County Bank,* 231 N. Y., 465; 15 A. L. R., 1344, it is said:

> "A moral obligation means that some direct benefit was received by the state, or some direct injury has been suffered by the claimant under circumstances which in fairness the state might be asked to respond."

Without burdening this opinion with further citation of authority it is sufficient to direct your attention to several former opinions of this office where this subject has been considered at considerable length and a large number of authorities reviewed. See Opinions of the Attorney General for 1928, pages 352 and 3056, for 1929, pages 915 and 1939, Opinion No. 1442 rendered under date of January 24, 1930.

As before stated, no mere definition is entirely satisfactory. Each case must be considered in the light of its particular facts. The Supreme Court of Ohio has never stated what constitutes a moral obligation although several lower courts have dealt with the question. See *Kossler* v. *Brown,* 4 O. C. D., 345; *State ex rel.* v. *Wall, Director,* 15 O. D., 349; *Caldwell* v. *Marvin,* 8 O. N. P., N. S., 387. See also *Board of Education* v. *State,* 51 O. S., 531.

Upon consideration of the authorities in this state and elsewhere, it is my opinion that a claim, whether sounding in tort or contract, against a political subdivision, may be assumed and paid as a moral obligation where the basis of the claim is shown to be such that the political subdivision received some benefit or the claimant suffered some injury or loss which benefit or injury or loss would constitute the basis of a legal and enforceable claim against the subdivision, were it not that because of technical rules of law no recovery may be had.

In the case outlined in your letter the county received the benefit of approximately $1200.00 worth of work and the contractor suffered a corresponding loss. Were it not for the technical rule of law which required the county auditor to certify that money had been lawfully appropriated and was in the treasury or in course of collection to the credit of an appropriate fund to meet the contract obligation of the contractor in order to validate his contract, the injunction spoken

of would not have been granted and the contractor would now have a legal and enforceable claim for the $1200.00 providing he had performed his contract in accordance with its terms. His performance was rendered impossible by reason of the injunction, and any claim under the contract was rendered invalid by reason of the failure of the auditor to make his certificate at the time of entering into the contract as provided by law.

Applying the rule with reference to moral obligations to these facts, it clearly follows that the claim for $1200.00 may be properly recognized and paid as a moral obligation. When paid, no recovery back could be had. *State* v. *Fronizer,* 77 O. S., page 7.

I am therefore of the opinion in specific answer to your question that the commissioners may lawfully recognize the claim of this contractor and pay the same as a moral obligation.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3468.

APPROVAL, LEASE TO OFFICE ROOMS IN THE MARSHALL BUILDING, CLEVELAND, OHIO, FOR THE USE OF THE STATE FIRE MARSHAL.

COLUMBUS, OHIO, July 31, 1931.

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

DEAR SIR:—This is to acknowledge receipt of your communication requesting my approval of a lease between W. G. Marshall of Cleveland, Ohio, and yourself, as Superintendent of Public Works, for the State of Ohio, by the terms of which lease Rooms 304, 305, 306 and 307 in the Marshall Building, Cleveland, Ohio, are let for the use of the State Fire Marshal for the period of one year beginning July 1, 1931, and ending June 30, 1932, at a rental of eighty dollars ($80.00) per month.

With your leases, encumbrance estimate No. 8 is enclosed, as required by section 2288-2, General Code.

After careful examination, I find that the lease is in proper legal form, and am herewith approving said lease and returning all data to you.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3469.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES AS RESIDENT DISTRICT DEPUTY DIRECTOR IN WAYNE COUNTY—SIDNEY BUCHER.

COLUMBUS, OHIO, August 1, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*