

2407.

COUNTY COMMISSIONERS—UNAUTHORIZED TO PAY PREMIUM ON BOND EXECUTED BY SURETY COMPANY TO INDEMNIFY FREEHOLDERS ON BOND OF COUNTY TREASURER.

SYLLABUS:

*A board of county commissioners may not pay for the premium on a bond executed by a surety company to indemnify four freeholders on the bond of a county treasurer.*

COLUMBUS, OHIO, March 24, 1934.

HON. RUSSELL V. MAXWELL, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR:—YOUR recent inquiry reads as follows:

“The bond of the County Treasurer of this County is signed by four persons as Security.

Please advise me as to whether or not the County Commissioners may pay for a bond to be issued by a surety company to indemnify these personal sureties?”

A board of county commissioners, being a creature of statute has such powers only as are conferred by the statutes. See *Peter vs. Parkinson*, 83 O. S. 36, 49; *Elder vs. Smith*, 103 O. S. 369; *State ex rel. Stanton vs. Andrews*, 105 O. S. 489, 494; *State ex rel. Bushnell vs. Cuyahoga County*, 107 O. S. 465, 470; 11 Ohio Jurisprudence, 332, “Counties,” section 86.

An examination of the statutes discloses no authority for the county commissioners who are the fiscal agents of the county, to pay for the premium on a bond of a surety company given to indemnify the four personal sureties who are on the bond of a county treasurer.

Sections 2633 and 9573-1, General Code, provide as follows:  
Section 2633.

“Before entering upon the duties of his office, the county treasurer shall give bond to the state in such sum as the commissioners direct with two or more bonding or surety companies as surety, or at his option, *with four or more freehold sureties* having real estate in the value of double the amount of the bond over all encumbrances to be approved by the commissioners and conditioned for the payment, according to law, of all moneys, which come into his hands, for state, county, township or other purposes. *The expense or premium for such bond shall be paid by the commissioners and charged to the general fund of the county.* Such bond, with the oath of office and the approval of the commissioners endorsed thereon, shall be deposited with the auditor of the county and by him carefully preserved in his office. Such bond shall be entered in full on the record of the proceedings of the commissioners, on the day when accepted and approved by them.” (Italics mine.)

Section 9573-1.

"The premium of any duly licensed surety company on the bond of any public officer, deputy or employe shall be allowed and paid by the state, county, township, municipality or other subdivision or board of education of which such person so giving such bond is such officer, deputy or employe."

The first of the two statutes above quoted authorizes the county commissioners to pay the expense or premium on the bond of the county treasurer given to the state, but nowhere does it authorize payment of the premium on a bond given by a surety company to indemnify original bondsmen on the bond of a county treasurer.

The latter of the two statutes, quoted supra, only authorizes the county to pay the premium on the bond of any public officer, deputy, or employe of the county, and clearly does not authorize payment of a bond of a surety company executed to indemnify the four freeholders on the bond of a county treasurer.

In view of the foregoing, I am of the opinion, in specific answer to your question, that a board of county commissioners may not pay for the premium on a bond executed by a surety company to indemnify four freeholders on the bond of a county treasurer.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

2408.

SPECIAL ASSESSMENTS—PROPERTY OWNER MAY PRESENT SPECIAL ASSESSMENT BONDS OF MUNICIPALITY TO OFFSET SPECIAL ASSESSMENTS OWED BY HIM TO MUNICIPALITY WHEN.

**SYLLABUS:**

*Where special assessments have been certified by a municipality to the county auditor, as provided by law, the owner of property against which any of said assessments have been levied, who holds bonds of such municipality issued in anticipation of the collection of such assessments, which bonds matured on or before January 1, 1933, and title to which was acquired by such property owner prior to said date, may, after the fiscal officer of such municipality has certified in writing his determination that such bonds can be used for the payment of taxes as provided in House Bill No. 94 of the 90th General Assembly, present said bonds to the treasurer of the county in which such municipality is located when such assessments become due and payable, and thereupon it becomes the duty of such county treasurer to accept said bonds in full or partial payment thereof.*

COLUMBUS, OHIO, March 26, 1934.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication, which reads as follows: