

2958.

APPROVAL—BONDS OF MORROW VILLAGE SCHOOL DISTRICT, WARREN COUNTY, OHIO, \$50,000.00, PART OF ISSUE DATED JULY 1, 1938.

COLUMBUS, OHIO, September 12, 1938.

*The Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN :

RE: Bonds of Morrow Village School Dist., Warren County, Ohio, \$50,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of school improvement bonds dated July 1, 1938, bearing interest at the rate of  $3\frac{1}{4}\%$  per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said school district.

Respectfully,

HEREERT S. DUFFY,  
*Attorney General.*

2959.

PROSECUTING ATTORNEY — EXPENSES ATTENDING MEETINGS OF PROSECUTORS' ASSOCIATION MAY BE PAID FROM FUNDS PROVIDED BY SECTION 3004 G. C. —SUCH FUNDS CANNOT BE USED FOR ATTENDING STATE BAR ASSOCIATION MEETINGS—O. A. G. FEBRUARY 23, 1938, No. 1966, APPROVED AND FOLLOWED.

*SYLLABUS:*

1. *The expenses of a prosecuting attorney incurred in attending meetings of the Prosecutors' Association may be paid from funds provided by Section 3004, General Code.*

2. *The funds provided by this section cannot be used for the payment of expenses incurred by a prosecuting attorney in attending State*

*Bar Association meetings. (Opinions of the Attorney General, 1938, No. 1966, approved and followed.)*

COLUMBUS, OHIO, September 13, 1938.

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

GENTLEMEN: This will acknowledge the receipt of your recent communication which reads as follows:

"We respectfully request your opinion upon the following question:

May the expenses of prosecuting attorneys for attendance at prosecuting attorneys' meetings and meetings of the State Bar Association be paid from the funds provided under Section 3004, General Code?"

The pertinent part of Section 3004, General Code, referred to in your communication, reads as follows:

"There shall be allowed annually to the prosecuting attorney in addition to his salary and to the allowance provided by Section 2914, an amount equal to one-half the official salary, to provide for expenses which may be incurred by him in the performance of his official duties and in the furtherance of justice, not otherwise provided for. Upon the order of the prosecuting attorney the county auditor shall draw his warrant on the county treasurer payable to the prosecuting attorney or such other person as the order designates, for such amount as the order requires, not exceeding the amount provided for herein, and to be paid out of the general fund of the county."

At the outset, it should be noted that the powers thus conferred upon the prosecuting attorney are limited only by the exercise of his sound discretion in determining the necessity of making expenditures "in the performance of his official duties and in the furtherance of justice." It was concluded in *Opinions of the Attorney General, 1915, Vol. I, page 16*, that no judicial tribunal nor administrative office had any authority to limit the amount of funds allowed the prosecuting attorney for expenses under Section 3004, General Code, or to regulate the time of their withdrawal. These matters are wholly determinable by the exercise of sound discretion on the part of the prosecuting attorney.

The boundaries within which such discretion can be exercised have been the subject of numerous opinions issued by this office. Accordingly, it will be helpful to review these opinions to determine the direction and extent of the boundaries in which the prosecuting attorney may freely act with respect to the powers granted him by Section 3004, General Code.

The first group of opinions on this subject declared that expenditures could properly be made under this section for the purpose of obtaining and presenting evidence in prosecutions conducted by the prosecuting attorney. Thus, in *Opinions of the Attorney General, 1915, Vol. I, page 491*, it was concluded that the expenses incurred by a witness coming from outside the state was a proper charge against the "3004 fund." This conclusion was extended in *Opinions of the Attorney General, 1927, Vol. I, page 212*, when it was recognized that a voluntary witness from outside the state might be reimbursed for his services at a rate higher than that established for the payment of witnesses who are subject to compulsory attendance.

The reimbursement of witnesses for expenses incurred by them in testifying is not the only form of evidence for which the "3004 fund" may be properly expended. The expense of exhuming a corpse was declared a proper charge in *Opinions of the Attorney General, 1915, Vol. I, page 549*; so also, according to *Opinions of the Attorney General, 1920, Vol. II, page 977*, is the purchase of a scales for the purpose of obtaining evidence for the prosecution of highway laws.

Proceeding further with the costs of presenting evidence is the payment of the salary of a secret service officer from this fund, which course was approved in *Opinions of the Attorney General, 1917, Vol. II, page 589*. This conclusion was approved and followed in *Opinions of the Attorney General, 1923, Vol. I, page 250*. As proper as the payment of the salary of such an officer from this fund is his reimbursement for expenses incurred while acting in his official capacity. *Opinions of the Attorney General, 1917, Vol. II, page 1917*.

Thus, an analysis of these opinions reveals a noticeably wide discretion which may be exercised by the prosecuting attorney when the purpose is to obtain evidence which is deemed appropriate by him to the conduct of prosecutions for which he is responsible. The eminent result of this analysis is to accent the extensiveness of the area within which the prosecutor is permitted to exercise his discretion. Plainly, the words of limitation imposed on the prosecutor's discretion in this section, namely, "in the performance of his official duties and in the furtherance of justice," have been consistently accorded a wide denotation.

With this thought in mind, I turn to examine the purpose and

the results of membership in the Prosecutors' Association of the State of Ohio. In the first place, active membership in this organization is restricted to incumbent prosecuting attorneys. In this respect, it is clearly distinguishable from private associations, such as the Buckeye Sheriffs' Association, the cost of membership in which I did not consider as a proper expenditure from the "3004 fund" in my Opinion No. 1966 issued February 23, 1938.

This restricted eligibility to membership in the Prosecutors' Association reflects its special and official purpose which, according to the purpose clause of the constitution of the association, is as follows: °

"The purpose of this organization shall be to increase the efficiency of its members in the pursuit of their profession, to broaden their interest in government, and to provide co-operation and concerted action on policies which affect the office of Prosecuting Attorney and to aid in the furtherance of justice."

The content of this paragraph indicates clearly the goal of the organization. The manifest and exclusive purpose of this organization is to assist the prosecuting attorney in the more efficient performance of his official duties and "to aid in the furtherance of justice."

The results effected by this organization flow generously from its express purpose. The tangible accomplishment of each meeting is evident. For instance, at the meeting held on October 15, 1937, the members were presented with material which enabled them to cope successfully with the new problems of tax foreclosure. At this meeting also the members evolved a plan of attack to determine the interest of their respective counties in the distribution of the "local government fund" derived from sales tax receipts. The worth of the meetings conducted by the Prosecutors' Association is reflected in the increased effectiveness of the prosecutors who attend them. When a prosecutor leaves these meetings he carries with him the outlines of pleadings improved in form and substance, together with the solutions to his problems of procuring and presenting evidence. Here, in a very direct and tangible manner, is the performance of his official duty which is in the furtherance of justice. That which would be the duty of each prosecutor to accomplish individually is through this organization accomplished collectively in a more efficient way. Therefore, it is my opinion that the membership dues and the expenses of attending the meetings of the Prosecutors' Associa-

tion are properly payable out of the funds made available by the provisions of Section 3004, General Code.

However, this conclusion does not apply to expenses incurred in attending meetings of the State Bar Association. My Opinion No. 1966, issued February 23, 1938, which deals with the expense of membership in a private organization, is dispositive of this question. Membership in the State Bar Association is available to lawyers in general. The purpose of its functions is accordingly too general to be considered as a direct aid in the conduct of the official duties of the prosecuting attorney.

In conclusion, therefore, I am of the opinion that the expenses of a prosecuting attorney incurred in attending meetings of the Prosecutors' Association may be paid from funds provided by Section 3004, General Code. However, the funds provided by this section cannot be used for the payment of expenses incurred by a prosecuting attorney in attending State Bar Association meetings.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

2960.

OHIO UNEMPLOYMENT COMPENSATION ACT--APPLICATION FOR REFUND--LIMITATIONS--NOT LATER THAN ONE YEAR--WHEN CONTRIBUTION BECOMES DUE.

*SYLLABUS:*

1. *An application for a refund under Section 1345-2 (e), General Code, must be made within the period described in the said section, to-wit: "not later than one year after the date on which any contribution or interest thereon becomes due."*

2. *In considering Section 1345-2 (e), General Code, a contribution becomes due when an employer is charged with the payment of same by the Unemployment Compensation Commission in accordance with Section 1345-4 (a) (1), General Code, or on the date when such contribution, any part thereof or interest thereon, would have been due under Section 1345-4 (a) (1), General Code, or any administrative rule adopted by the Unemployment Compensation Commission in connection with the payment of contributions, if any contribution or part thereof or interest thereon had been due (i. e., if the particular employer were amenable to*