

House Bill No. 413 provides for extending the open season beyond three and one-half months in each year, and also invades the close season as limited by the treaty aforesaid, and the laws and regulations in regard to said treaty.

You are therefore advised that it is the opinion of this department that said House Bill No. 413, if enacted into law, would be in direct violation of the Constitutional Federal enactments in regard to migratory birds, and therefore invalid and inoperative.

Respectfully,
C. C. CRABBE,
Attorney General.

159.

AUDITOR—STATEMENT TO COUNTY COMMISSIONERS SHOULD
CONTAIN AMOUNT SUFFICIENT TO PAY ALL EMPLOYES OF
AUDITOR'S OFFICE—ONLY IN CASE AMOUNT FIXED BY COUNTY.

SYLLABUS:

It is the duty of the county auditor to include in his detailed statement to the county commissioners an amount sufficient, in his judgment, to pay all the employes of the auditor's office. Only in case the amount fixed by the county commissioners for the auditor's help is insufficient shall the state tax commission prescribe additional employes; but when so prescribed, under section 5366 G. C., they must be paid from the county fund.

COLUMBUS, OHIO, March 19, 1923.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your request for the opinion of this department as follows:

“Application has been made to this Commission by a county auditor under section 5366 for authority to appoint certain employes and pay their compensation out of the general county fund. The duties of these employes will be to distribute to taxpayers the blanks on which to make personal property tax returns.

An identical request was made to and allowed by this Commission in 1921 and 1922.

Will you please advise the Commission:

1. Might not the auditor have included a sufficient amount to meet this expense in his request filed with his Board of County Commissioners under section 2980?

2. Should he not have done so?

3. Has this Commission sole jurisdiction to authorize the appointment by the auditor of the experts and other employes mentioned in the third paragraph of section 5366?

4. Are the employes appointed by the auditor under said section 5366 G. C. to be paid only out of the general county fund or can they be paid out of the amount allowed by the county commissioners under section 2980?"

Section 2981 G. C. makes provision for the county auditor to appoint the employes needed in his office, and section 2980 G. C. provides the method and means for paying such help. Section 2981 G. C. authorizes the appointment of:

"Deputies, assistants, clerks, bookkeepers and other employes."

Section 2980 G. C. provides that the auditor "shall file" with the county commissioners a detailed statement of the probable amount necessary to pay the employes of his office for the next year, and that the commissioners "shall fix" the amount for such purpose between certain fixed percentages of the fees collected in such office. In this manner provision was made in these two sections for the employment of help in the auditor's office and the payment of the same, and this was done before the enactment of section 5366 G. C.

This latter section (5366 G. C.) is in part as follows:

" * * * For the purpose of carrying out the provisions of this act and the provisions of sections 2583, 5366 and 5612 of the General Code, each county auditor shall appoint such number of experts, deputies, clerks and employes that may from time to time be prescribed for him by the Tax Commission of Ohio."

Thus it will be seen that the enactment of section 5366 G. C. was presumably cumulative so far as it relates to employes in the office of the county auditor. The provisions in section 2980 G. C. that the auditor "shall file" and that the county commissioners "shall fix" are mandatory, but I find no mandatory provision in the language in section 5366 G. C. so far as it refers to any action of the state tax commission. And, since the one section 2980 G. C. is mandatory, and the other, section 5366 merely optional, I am of the opinion that section 5366 G. C. is to be used in the matter of employes for the auditor only when in the judgment of the state tax commission the number of deputies, etc., in the county auditor's office are not sufficient; and this department is further of the opinion that it is the duty of the county auditor to include in his statement to the county commissioners an amount sufficient to pay all employes in the auditor's office for the coming year.

In answer, therefore, to your first and second questions, I believe that the auditor might not only have included a sufficient amount to meet all the expenses of his employes in his request filed with the county commissioners, but that it was his duty to have done so.

In answer to your third question, I am of the opinion that the tax commission has not the sole authority to authorize the employment by the auditor of the experts and other employes mentioned in the third paragraph of section 5366 G. C. because these are the same employes as named in section 2981 G. C. and the two sections 2981 and 5366 G. C. are cumulative and authority to name such employes granted in each; the authority given to the tax commission under the latter section is only optional.

In answer to your fourth question, I am of the opinion that the employes appointed by the auditor under section 5366 G. C. (that is, when prescribed by the tax commission) can only be paid out of the general county fund as provided in said section, which is as follows:

"The compensation of such experts, deputies, clerks and employes shall be fixed by the county auditor subject to the approval of the tax commission of Ohio, and shall be paid monthly out of the general county fund upon warrant of the county auditor."

This is very specific as to how they shall be paid, and they cannot be paid out of the amount allowed by the county commissioners under section 2980 G. C. when appointed under the provisions of section 5366 G. C.

Respectfully,
C. C. CRABBE,
Attorney General.

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SCHOOLS—COUNTY BOARD OF EDUCATION MAY CREATE SCHOOL DISTRICT FROM ONE OR MORE DISTRICTS—DISTRICTS MAY BE LESS THAN SIXTEEN SQUARE MILES—SECTION 4687 G. C. CONSTRUED.

1. *A county board of education may create a school district from one or more school districts or parts thereof, but to parcel out of a school district a part thereof exempt by law from taxation which has no school facilities for the children of compulsory school age living therein and for which children no school privileges are provided by the board at the time it so parcels out said area from the district to which it previously belonged, such act is illegal and void unless and until educational privileges are furnished to such children.*

2. *County boards of education do not create villages. The creation of a new village and of a village school district are, by law, simultaneous acts. The area of a rural district of less than sixteen square miles outside of a newly erected village by force of section 4687 G. C., at once becomes a part of the village school district. Rural school districts of less area than sixteen square miles by favor of section 4736 G. C., may be created by a county board of education.*

3. *A village created within the area of another village school district which area, as provided in section 4678 G. C., was attached to an earlier created village, becomes a village school district whose limits or boundaries are identical with those of the later created village, and the area outside of the later created village remains a part of the first village school district subject to any action under authority of section 4736 G. C. the county board of education may take concerning it.*