

You also state that you are of the opinion that if the service performed by said employe is within a classification for which a less amount than fourteen hundred dollars per annum is provided for in your schedule, that he would still continue to draw his compensation at the rate of fourteen hundred dollars per annum, and I agree with this conclusion to the extent of saying that the employe in question will be entitled to draw this salary so long as he holds the same position.

You then ask whether or not the employe would be entitled to draw a greater salary provided the services which he renders are within a classification for which a greater sum than fourteen hundred dollars per annum is provided.

Section 9 of the Appropriation Act must be construed with Section 2255 of the General Code. It is evidently a proviso placed in said act to express the legislative intent, that Section 2255, General Code, was not amended by implication in the passage of the Appropriation Act. Both sections refer to persons holding *positions* within the class for which a uniform rate of compensation is fixed and drawing larger salaries than provided for in said classification at the time the act was passed. If the position is changed the exception does not apply. The last part of Section 9, supra, specifically provides that:

“Such rates of compensation as fixed on said date for such positions shall be the rates at which the appropriation herein made may be expended for the compensation of such persons *while holding such positions.*”

If, however, such position be reclassified upon survey, so as to place the same in a classification or grade for which a higher rate of pay is provided, the incumbent would be entitled to draw the increased pay, it being my opinion that it was the plain intention of the legislature by Section 2255 and Section 9 of the Appropriation Act, supra, to provide that the salary incident to a certain position should not be reduced by a general classification and grading, but not to prevent such position from being reclassified in a higher grade thus entitling the incumbent thereof to increased pay.

It is therefore my opinion that an employe within the classified service of the state, who is by virtue of the provisions of Section 2255 of the General Code and Section 9 of the Appropriation Act (H. B. No. 502), receiving a greater salary than that provided for the position in the classification adopted by the legislature, may receive an increased salary if, upon a survey of said position, it is found that the duties of the position are within a classification for which a greater compensation than he is now receiving is provided by law.

Respectfully,

EDWARD C. TURNER,

Attorney General.

751.

BUREAU OF INSPECTION—CONCERNING AUTHORITY TO EXAMINE
ACCOUNTS OF HUMANE SOCIETIES.

SYLLABUS:

The Bureau of Inspection and Supervision of Public Offices has authority to examine the accounts of such humane societies as are organized under the provisions of Sections 10067, et seq., General Code, and receive public money as provided in Section 5653 or Section 12971 of the General Code. However, the payment from public funds of all or a

part of the salary of a humane agent, under the provisions of Section 10072, General Code, does not constitute payment to the society of "public money for its use and purpose," within the meaning of Section 274, General Code, so as to authorize or permit examination of the accounts of the society by the Bureau of Inspection and Supervision of Public Offices.

COLUMBUS, OHIO, July 19, 1927.

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

GENTLEMEN:—Permit me to acknowledge receipt of your request for my opinion as follows:

"Section 274 G. C. reads:

'There shall be a bureau of inspection and supervision of public offices in the department of auditor of state which shall have power as hereinafter provided in sections two hundred seventy-five to two hundred eighty-nine, inclusive, to inspect and supervise the accounts and reports of all state offices including every state educational, benevolent, penal and reformatory institution, public institution and the offices of each taxing district or public institution in the State of Ohio. Said bureau shall have the power to examine the accounts of every private institution, association, board or corporation receiving public money for its use and purpose, and may require of them annual reports in such form as it may prescribe. The expense of such examination shall be borne by the taxing district providing such public money. By virtue of his office the auditor of state shall be chief inspector and supervisor of public offices, and as such appoint not exceeding two deputy inspectors and supervisors, and a clerk. No more than one deputy inspector and supervisor shall belong to the same political party.'

Section 10072 G. C. reads:

'Upon the approval of the appointment of such an agent by the mayor of the city or village, the council thereof shall pay monthly to such agent or agents from the general revenue fund of the city or village, such salary as the council deems just and reasonable. Upon the approval of the appointment of such an agent by the probate judge of the county, the county commissioners shall pay monthly to such agent or agents, from the general revenue fund of the county, such salary as they deem just and reasonable. The commissioners, and the council of such city or village may agree upon the amount each is to pay such agent or agents monthly. The amount of salary to be paid monthly by the council of the village to such agent shall not be less than five dollars, by the council of the city not less than twenty dollars, and by the commissioners of the county not less than twenty-five dollars. But not more than one agent in each county shall receive remuneration from the county commissioners under this section.'

In view of these provisions does the Bureau have authority to examine the accounts of a humane society whose agent received a salary from the city treasury?"

The Bureau of Inspection and Supervision of Public Offices is empowered to inspect and supervise the accounts and reports of all state offices and institutions and the offices of each taxing district or public institution in this state, and "to examine the accounts of every private institution, association, board or corporation receiving public money for its use and purpose." The purpose of this inspection and supervision is

to see that public moneys are expended by public officers according to law and that public money given to any "private institution, association, board or corporation," is expended for the purposes authorized. The whole scheme is provided as a means of determining whether all public moneys are legally expended and applied to lawful uses.

Your inquiry relates to humane societies, and you refer to and quote Section 10072 of the General Code. The question, therefore, evidently refers to humane societies organized under the provisions of Sections 10067, et seq., of the General Code. Section 10067 provides that societies for the prevention of acts of cruelty to animals may be organized in any county by an association of not less than seven persons and that not less than three of the members shall be elected directors. Section 10068 of the General Code provides that the secretary or clerk of the organization or meeting must make a true report of the proceedings and certify and forward it to the Secretary of State, who shall record it; that this record shall contain the name by which such association is to be known; and that the directors and associates shall thereafter be invested with the powers, privileges, and immunities "incident to incorporated companies."

Section 10070 of the General Code provides that such societies may appoint agents who are residents of the county or municipality for which the appointment is made, for the purpose of prosecuting any person guilty of an act of cruelty to persons or animals; and that such agent may arrest any person found violating any provision of the humane laws.

Section 10071 of the General Code provides that all appointments by such societies shall be approved by the mayor of the city or village for which they are made, and that if the society exists outside of a municipality, the appointments shall be approved by the probate judge of the county, and that these officers shall keep a record of such appointments.

This brings us to a consideration of Section 10072 which you quote in your inquiry. This section provides that if the agent is appointed for the municipality the council thereof shall pay monthly to such agent from the general revenue fund an amount which it deems just and reasonable as such agent's salary, and if the agent's appointment be approved by the probate judge, the county commissioners shall pay said salary to the agent from the general revenue fund of the county.

It will be observed the section does not provide that any "association, board or corporation" shall receive public money for its use. It provides for the payment of a salary direct to the person entitled thereto from the general revenue fund of the municipality or the county, and the use thereof is for the private use of the agent.

The succeeding sections give to the officers so appointed, certain police power.

Your inquiry requires a consideration of Section 10076 of the General Code, which provides as follows:

"For this service and for all services rendered in carrying out the provisions of this chapter, such officers, and the officers and agents of the association, shall be allowed and paid such fees as they are allowed for like services in other cases, which must be charged as costs, and reimbursed to the society by the person convicted."

This section was construed in the case of *State ex rel. vs. Kleinhoffer*, 92 O. S. 162. In that case it was held that only such officers for whom fees had been provided by law could receive fees as provided in the above quoted section, the syllabus in that case reading:

"There is no authority for the payment of fees out of the county treasury to a humane officer for services rendered by him in cases prosecuted before a justice of the peace by a humane society under the laws of the state."

In the opinion the court said:

“An examination of the statutes will disclose that no provision is made for fees to be paid to the humane officer in any other case. And again, if the pronoun ‘they’, as used in Section 10076, could be held to refer to officers other than humane officers—for example, to a sheriff or constable—it would be impossible to determine to which it does refer. And it is important and necessary that this be known, for the fees of a sheriff and those of a constable as fixed by Sections 2845 and 3347, respectively, are different.

It is well settled that the compensation of a public officer must be fixed by statute. The legislature has failed to provide for fees for services rendered by a humane officer and it is not the province of the court to make laws. We conclude, then, that as there is no statutory provision for the allowance of fees in the case under consideration, the payment made by the county was unauthorized.”

The section further provides that the fees allowed and paid to officers entitled thereto “must be charged as costs, and reimbursed to the society by the person convicted.” “Reimburse” means to pay back, and therefore if a society receives anything by the provisions of said section it is only such amount as it has been required to expend in connection with the prosecution as fees and costs, and is not public money received for its use as provided in Section 274 of the General Code.

For the reason, then, that whatever public moneys is paid out by virtue of the provisions of Section 10072, supra, is paid as salary to the individual filling the position of humane agent and not to the society, and since Section 10076, supra, does not provide for the payment of any public moneys to the society, the operation of neither of these sections would authorize or permit examination by your Bureau.

However, in connection with your question Sections 5653 and 12971 of the General Code must also be considered. Section 5653, General Code, provides:

“After paying all horse, sheep, cattle, swine, mule and goat claims at the December session of the county commissioners, if there remain more than one thousand dollars of the dog and kennel fund arising from the registration of dogs and dog kennels for such year the excess at such December session shall be transferred and disposed of as follows: in a county in which there is a society for the prevention of cruelty to children and animals, incorporated and organized as provided by law, which has one or more agents appointed in pursuance of law, or any other society organized as provided by Sections 10062 to 10067, inclusive, of the General Code, that owns or controls a suitable dog kennel or place for the keeping and destroying of dogs which has one or more agents appointed and employed in pursuance of law, all such excess as the county commissioners deem necessary for the uses and purposes of such society by order of the commissioners and upon the warrant of the county auditor shall be paid to the treasurer of such society and any surplus not so transferred shall be transferred to the county board of education fund at the direction of the county commissioners.”

Section 12971 reads:

“If prosecution under either the next preceding section or section twelve thousand nine hundred and sixty-eight, is instituted by an incorporateb society for the prevention of cruelty to animals, the fines collected thereyid shall be paid to such society; otherwise fines collected under such sections shall be paid to any society so incorporated.”

These sections provide that humane societies may receive "public money for its uses and purposes", and where, under authority of either of these sections, public moneys are paid to a humane society it is the duty of your Bureau to make proper examination.

It is therefore my opinion that the Bureau of Inspection and Supervision of Public Offices has authority to examine the account of such humane societies as are organized under the provisions of Sections 10067, et seq., General Code, and *receive public money* as provided in either Section 5653 or Section 12971 of the General Code. However, the payment from public funds of all or a part of the salary of a humane agent, under the provisions of Section 10072, General Code, does not constitute payment to the society of "public money for its use and purpose", within the meaning of Section 274, General Code, so as to authorize or permit examination of the accounts of the society by the Bureau of Inspection and Supervision of Public Offices.

Respectfully,

EDWARD C. TURNER,
Attorney General.

752.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND GUSTAV HIRSCH, COLUMBUS, OHIO, FOR CONSTRUCTION OF LOW TENSION WIRING, EXTENSION OF TUNNEL, KENT STATE NORMAL SCHOOL, KENT, OHIO, AT AN EXPENDITURE OF \$2,000.00—SURETY BOND EXECUTED BY THE COMMERCIAL CASUALTY INSURANCE COMPANY.

COLUMBUS, OHIO, July 20, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Highways and Public Works, for and on behalf of the Board of Trustees of Kent State Normal School, and Gustav Hirsch, of Columbus, Ohio. This contract covers the construction and completion of Contract for Low Tension Wiring, Repairing and Extension of Tunnel System and necessary equipment therein, Kent State Normal School, Kent, Ohio, and calls for an expenditure of two thousand dollars (\$2,000.00.)

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted a contract bond upon which the Commercial Casualty Insurance Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

EDWARD C. TURNER,
Attorney General.