

that time with respect to the payment of teachers' salaries may be read into, and considered applicable to the payment of the superintendent's salary.

Strictly speaking of course, a superintendent is not a teacher. The rule in terms applies only to teachers. A similar rule might lawfully be adopted by a board of education specifically applying to the superintendent. It was not done in this case. He was placed, however, on the regular teachers' pay-roll and directed to elect by which method his salary should be paid and that procedure was followed for approximately four and one-half years, until he resigned and final payment was made to him without question, on the theory that the rule referred to above, was a part of his contract of hire.

The fact that the board approved this final pay-roll and authorized its payment without question is some evidence, at least, that the board considered the superintendent's contract to have been made in the light of the rule applied to teachers. I understand that the members of the board do not now question their right to lawfully make payments to the superintendent as was done.

Inasmuch as the intention of the parties in making the contract of employment with the superintendent in the first place, governs a proper construction of the contract, and both parties now contend that their intention at the time of making the contract was to place the superintendent in a class with the teachers, so far as paying the salary was concerned, and their attitude since that time has been consistent with such a possible intent, it will be impossible now for me to say that their intent when making the contract was otherwise than they now claim it to have been.

I am therefore of the opinion, in specific answer to your question, that the superintendent of schools in the district referred to might lawfully have been paid his salary upon the basis of a ten-month year or a twelve-month year as he might elect, and having elected to be paid upon the basis of a twelve-month year, he was entitled upon his resignation at any time during a school year, to be paid the accumulated surplus held in reserve for the payment of his summer vacation salary, in accordance with the rule of the board adopted for the payment of teachers' salaries on August 19, 1920.

I have not checked the exact amounts which were paid to the superintendent in question, and do not wish to be understood as vouching for the correct amounts of these several payments.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2332.

SOLDIERS' RELIEF COMMISSIONS—MEETING AT COLUMBUS CALLED BY GOVERNOR—COUNTY COMMISSIONERS MAY NOT REIMBURSE MEMBERS FOR EXPENSES INCURRED THROUGH ATTENDANCE.

SYLLABUS:

County commissioners are not authorized by law to allow to the persons composing the several soldiers' relief commissions throughout the State their actual expenses incurred and a fair compensation for their services for attendance upon the meeting

of the members of the said several soldiers' relief commissions held at Columbus, Ohio, on July 19, and 20, 1930.

COLUMBUS, OHIO, September 13, 1930.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads as follows:

“The Governor recently called a meeting in Columbus of the various members of the Soldiers' Relief Commissions in the State. We are not advised as to the purpose of the meeting.

Question: May the members of such soldiers' relief commissions be paid the compensation allowed by the county commissioners and their actual expenses incurred in attendance upon such meeting?”

By force of Section 2930, General Code, there is appointed by the county commissioners in each county a “soldiers' relief commission” composed of three persons, residents of the county. The purpose of the commission, set forth in the statute referred to, is to investigate and prepare lists of indigent soldiers, sailors and marines of the Spanish-American War and of the World War, and of their wives, widows, indigent parents, minor children and wards, who have been bona fide residents of the State one year and of the county six months prior to the first Monday in May of each year and who, in the opinion of the commission, require-aid and are entitled to relief under the law. The commission is authorized to fix an allowance for such persons and to supervise to some extent the extension of necessary relief to such persons.

In special cases of sickness, accident or great destitution, the commission is authorized to grant emergency relief to persons coming within the classes named above. The said commission may be allowed actual expenses that would be incurred in the performance of their duties and a fair compensation for their services in accordance with Section 2932, General Code, which reads:

“On the presentation of an itemized statement thereof, the county commissioners shall allow the persons composing the soldiers' relief commission, their actual expenses incurred in the performance of their duties, and a fair compensation for their services. The county auditor shall issue his warrant upon the county treasurer for the amount so allowed.”

The meeting to which you refer was called by the Governor, at the request of the Adjutant General, for July 19, and 20, 1930, at Columbus, Ohio. It had come to the attention of the Adjutant General that the working of the soldiers' relief commission law was not uniform throughout the State and that in many instances it had fallen short in its administration of the purposes for which it was enacted. Instances had come to the attention of the Adjutant General where the commission in some counties had extended relief to ex-soldiers and their families who were not indigent and who were well able to take care of themselves; while on the other hand, many cases existed where relief was not extended where needed. In some counties practically no allowance was made at all for the purposes stated, while in others money was actually wasted by the extension of relief to persons who were not entitled to the same under the law.

The purpose of calling members of the several county soldiers' relief commissions together was to point out to them the unequal and inequitable administration

of the law throughout the State and to instruct them as to the proper administration of the law.

Inasmuch as the statute provides that the commissioners may allow the persons composing a county soldiers' relief commission their actual expenses incurred in the performance of their duties and a fair compensation for their services, the question of whether or not such allowances may be made to the members for their expenses in attending this meeting and allowance for their time in attending the same, resolves itself into the determination of whether or not the attendance of this meeting was in the performance of a duty imposed by law upon the members of said commissions.

An examination of the law relating to the duties of the members of county soldiers' relief commissions discloses that those duties are confined strictly to the county for which each commission is appointed. Nothing therein requires a county soldiers' relief commission to cooperate in any respect with the commissions of other counties. The extension of relief which they are authorized to make is confined strictly to their own county and does not require the cooperation of other counties, nor does it require the members of the commission to leave their own county for any purpose whatever, unless perhaps it might be for the investigation of some exceptional specific case.

Nor do I find that the Adjutant General or the Governor has any control over the administration of the law providing for the extension of relief in counties to indigent soldiers, sailors or marines or their families, or any control over the members of the county soldiers' relief commissions in their administration of this law, or any authority to call together the members of the several county soldiers' relief commissions so as to impose a duty upon the members to attend.

The Adjutant General, being an ex-soldier, is of course naturally interested in the proper administration of the law, and perhaps more so than the ordinary citizen because of his state-wide contact with military affairs and with associations of ex-soldiers, sailors and marines.

This office has on a number of occasions been called upon to determine the lawfulness of reimbursing public officers for actual expenses incurred in the performance of their duties. Most of these questions are not directly analogous to the question here presented, for the reason that in most such cases the question arose because of the absence of any statute authorizing the payment of expenses in any case, whereas, in the present instance, statutory authority exists for the payment of the actual expenses of members of county soldiers' relief commissions when incurred in the performance of their duties.

It has been generally held that public officers may be reimbursed for actual expenses incurred in the performance of the duties imposed by law, even though no statute specifically authorizes such payments. *McQuillin on Municipal Corporations*, Second Edition, Section 541; *Abbott on Municipal Corporations*, Section 697; *Throop on Public Officers*, Section 495; *Opinion No. 2082*, issued under date of July 11, 1930; and *Opinion No. 2170*, issued under date of July 29, 1930.

The controlling principle running through the observations of text writers and Opinions of former Attorneys General, is that an officer may be reimbursed for expenses when in the actual performance of duties imposed by law, but that those expenses may not be allowed when such public employe or officer is on a mission simply to acquire general information with respect to the duties of his office or position and not in furtherance of some specific project or undertaking then under way. See *Annual Report of the Attorney General for 1910-1911*, page 242; *Annual Report of the Attorney General for 1912*, page 432; *Opinions of the Attorney General*

for 1919, at pages 143 and 343; *Opinions Nos. 2082 and 2170*, referred to above; and *State vs. Wright*, 17 C. C. (N. S.) 396.

The purpose of the attendance of the members of the several county soldiers' relief commissions at the meeting referred to was not in furtherance of any specific duty enjoined by law or of any specific immediate project or undertaking then under way, but merely for a discussion of the general principles underlying the law for the extension of soldiers' relief and of comparing notes as to the actual administration of the law.

The invitation of the Governor to attend this meeting was not in the nature of a command and no legal duty devolved upon any of the members of the commissions to attend the meeting. They could have fully performed their statutory duty without attending this meeting, and as a matter of fact, many members of the several commissions did not attend the meeting. No obligation arose because of the invitation to attend the meeting. The attendance at the meeting must be held to have been purely voluntary and in the nature of an attendance of a convention of like officials, which it has been held in a number of opinions, referred to above, is not in furtherance of a duty enjoined by law, for which an allowance for expenses and time may lawfully be made.

I am therefore of the opinion, in specific answer to your question, that county commissioners are not authorized by law to allow to the persons composing the several soldiers' relief commissions throughout the State their actual expenses incurred and a fair compensation for their services for attendance upon the meeting of the members of the said several soldiers' relief commissions held at Columbus, Ohio, on July 19, and 20, 1930.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2333.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND PISCOPE-GILL CONSTRUCTION COMPANY OF CLEVELAND, OHIO, FOR CONSTRUCTION AND COMPLETION OF OHIO STATE ARMORY AT MT. VERNON, OHIO, AT AN EXPENDITURE OF \$51,775.00—SURETY BOND EXECUTED BY THE AETNA CASUALTY AND SURETY COMPANY OF HARTFORD, CONNECTICUT.

COLUMBUS, OHIO, September 13, 1930.

HON. A. W. REYNOLDS, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by and through A. W. Reynolds, Adjutant General of Ohio and Director of State Armories, Columbus, Ohio, and Vincent Piscope and William Gill, doing business as a partnership under the name of Piscope-Gill Construction Company of Cleveland, Ohio. This contract covers the construction and completion of the Ohio State Armory to be erected at Mt. Vernon, Ohio, including alternate 2, vapor heating system. Said contract calls for an expenditure of fifty-one thousand seven hundred and seventy-five dollars (\$51,775.00).

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