

Wyscaver vs. Atkinson, 37 O. S. at p. 97:

“In short, the thing prohibited is the combination of any form whatever of the public funds or credit of any county, city, town or township with the capital of any other person, whether corporated or unincorporated, for the purpose of promoting any enterprise whatever.”

Under the literal rule of those cases, it is probable, therefore, that the plan of buying used by the municipal hospital concerned is in violation of Article VIII, Section 6 of the Constitution of this state.

A consideration of all of the above reasons leads me inevitably to the opinion that a municipal hospital may not expend funds for a joint purchasing service accomplished through the agency of a hospital council which purchases supplies and equipment for all hospitals within a certain locality.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.

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3133.

SOLDIERS' RELIEF COMMISSION — PROSECUTING ATTORNEY LEGAL ADVISER — COUNTY WHERE MEMBERS APPOINTED AND WHERE HE HOLDS OFFICE—NO AUTHORITY UNDER SECTION 2932 G. C. FOR BOARD COUNTY COMMISSIONERS TO AUTHORIZE WARRANTS TO PAY TRAVELING EXPENSES, SUCH COMMISSION, TO AND FROM COLUMBUS ACCOUNT OF CONFERENCE WITH STATE OFFICIALS TO DETERMINE LEGAL INTERPRETATION OF STATUTE—SUCH ACT NOT A DUTY OF MEMBERS, SOLDIERS' RELIEF COMMISSION.

SYLLABUS:

1. *The prosecuting attorney is the legal adviser to the members of the soldiers' relief commission for the county in which he holds office and for which such members have been appointed.*
2. *The board of county commissioners is not by Section 2932 of the*

*General Code granted authority to authorize the issuance of warrants for the payment of the traveling expenses of the members of the county soldiers' relief commission to and from Columbus for the sole purpose of a conference with state officials with respect to the legal interpretation which should be given to a statute, since the performance of such act is not a duty of the members of the soldiers' relief commission.*

Columbus, Ohio, December 18, 1940.

Hon. Frank T. Cullitan, Prosecuting Attorney,  
Cleveland, Ohio.

Dear Sir:

I am in receipt of your request for my opinion which reads:

"The County Auditor seeks to be informed as to the legality of issuing warrants for three expense accounts tendered by the Soldiers Relief Commission of Cuyahoga County, which accounts purport to set forth a list of expenses incurred by the three members of the Commission while on a voluntary trip to Columbus and return for the following purpose:

In June, 1939 Sections 3391, 3391-12 G. C. were enacted providing for a complete system for dispensing of poor relief. Under Section 3391 G. C. the term 'Public Assistance' includes 'soldiers' relief, as provided by Sections 2934 and 2941, both inclusive, of the General Code. This classification apparently changes the existing laws and places the Soldiers Relief Commission under the heading of Public Assistance, which is a department under the jurisdiction of the Director of Public Welfare. Several other legal questions arose relative to a conflict of authority between the functions of the Department of Public Welfare and Soldiers Relief Commissions.

The members of the Cuyahoga County Soldiers Relief Commission being in doubt as to the above matters and as to the correct interpretation of Section 3391 et seq., went to Columbus for the purpose of discussing these matters with the Public Welfare Director, Public Assistance Director, and Attorney General. Several conferences were held with the result that Mr. \_\_\_\_\_ of your office informed the Commission that Section 3391 et seq., did not in any wise affect the functions and duties of the Commission in carrying out their powers with respect to soldiers relief.

The question now arises as to whether the members of the Soldiers Relief Commission are entitled to their expenses incurred on this trip under Section 2932 G. C., which provides that the County Commissioners may allow the persons composing a County Soldiers Relief Commission their actual expenses incurred in the performance of their duties."

In view of the recitals contained in your letter it may not be amiss to discuss briefly such statements. Sections 3391, 3391-1 to 3391-12, General Code, were enacted as House Bill 675 by the Ninety-Third General Assembly. Such act in terms, and as stated in its title, was "to provide for the administration of poor relief," etc. As you state, such act provides a complete system for the administration of poor relief. Such act defines, for the purposes of such act, the term "poor relief," which definition, in so far as is material to the point now under discussion, reads (Section 3391, General Code):

"'Poor relief' means food, clothing, shelter, and other commodities and services necessary for subsistence, or the means of securing such commodities and services, furnished at public expense to persons in their homes, or, in the case of homeless persons, in lodging houses or other suitable quarters. \* \* \* Poor relief may take the form of 'work relief,' 'direct relief' or 'medical care' as herein defined."

Such section then defines the terms "work relief," "direct relief" and "medical care." However, since such definitions are not pertinent to your inquiry I will not reiterate them herein.

Section 3391-3, General Code, imposes certain duties upon the Director of Public Welfare and confers certain powers upon him with reference to the administration of "poor relief," as defined in such act. Section 3391-11, General Code, places further obligations on him with respect to poor relief, as so defined. Neither of such sections contains any reference to "public assistance."

In Section 3391, General Code, we find a legislative definition of "public assistance." Such section states that:

"For the purposes of this act:

\* \* \*

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'Public assistance' includes poor relief and also the following:

\* \* \* soldiers' relief, as provided by sections 2934 to 2941, both inclusive, of the General Code; \* \* \* and all other forms of aid to recipients from public funds."

The express language of such section is, that the definition is "for the purposes of this act" (sections 3391, 3391-1 to 3391-12 both inclusive of the General Code). When we examine the provisions of such act we find that the legislature has therein used the term "public assistance" at but one place other than in such definition. Thus, in section 3391-2, General Code, sub-

paragraph 7, the legislature, in granting the powers to the "local relief authorities" and prescribing their duties states that:

"There shall be created in each county a central clearing office for the purpose of keeping records of all persons in the county receiving *public assistance* after the effective date of this act. Such records shall set forth the kind of *public assistance* granted to each person as well as any other information required by the state director; provided, however, that the state director may dispense with the establishment of a central clearing office in a county wherein records, in his judgment sufficient for the purpose, are maintained by either a public or a private agency. The board of county commissioners shall have authority to appoint the necessary assistants in the central clearing office. Such assistants shall be exempt from the provisions of sections 486-1 to 486-30, both inclusive, of the General Code." (Emphasis added.)

It is, therefore, to be seen that House Bill 675 does not grant to the Director of Public Welfare any powers with reference to "public assistance," other than to abolish the central clearing house which is by such section required to keep a record of its dispensation.

An examination of such House Bill 675 does not disclose any language which purports to affect the administration of "soldiers' relief" in any manner, with the single exception above noted of requiring the creation of a central clearing house for the purpose of keeping a record of its recipients.

While I have at all times endeavored to be helpful to municipal and county officers, and it has been customary for members of my staff to discuss with such officers legal questions dealing with their local affairs, it has always been the policy of this office, consistently followed, to refer such officers to their proper legal advisers such as their respective law directors, solicitors or prosecuting attorneys, inasmuch as the Attorney General is limited by law to officially advising state officers, boards, commissioners and bureaus, and county prosecuting attorneys on matters in which the state and its political subdivisions are interested.

Coming now to answer your inquiry, Section 2932, General Code, defines the method of payment of the expenses of the Soldiers' Relief Commission. Such section 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."

Since your inquiry is as to whether the county auditor may issue the warrant for the expenses, I direct your attention to Section 2570, General Code, which reads:

“Except moneys due the state which shall be paid out upon the warrant of the auditor of state, the county auditor shall issue warrants on the county treasurer for all moneys payable from such treasury, *upon presentation of the proper order or voucher therefor*, and keep a record of all such warrants showing the number, date of issue, amount for which drawn, in whose favor, for what purpose and on what fund. He shall not issue a warrant for the payment of any claim against the county, *unless allowed by the county commissioners*, except where the amount due is fixed by law or is allowed by an officer or tribunal authorized by law so to do.”  
(Emphasis added.)

It is thus evident that the primary duty of determining whether warrants should be issued under the facts in question is upon the board of county commissioners rather than the county auditor. Since such Section 2932, General Code, contemplates the payment of the “actual expenses in the performance of their duties” of the commissioners, your inquiry is whether the expenses referred to in your inquiry were expenses incurred by such commissioners in the performance of their duties.

If, as you state, the sole purpose of their trip to Columbus was to obtain legal advice as to their duties in view of the enactment of a statute, which appeared to them to affect their powers, we must refer to Section 2917, General Code, which reads in part:

“The prosecuting attorney shall be the legal adviser of the county commissioners and all other county officers and county boards and any of them may require of him written opinions or instructions in matters connected with their official duties. He shall prosecute and defend all suits and actions which any such officer or board may direct or to which it is a party, and no county officer may employ other counsel or attorney at the expense of the county except as provided in section twenty-four hundred and twelve. He shall be the legal adviser for all township officers, and no such officer may employ other counsel or attorney except on the order of the township trustees duly entered upon their journal, in which the compensation to be paid for such legal services shall be fixed. \* \* \*”

Section 2412, General Code, referred to in such section reads:

“If it deems it for the best interests of the county, the common pleas court, upon the application of the prosecuting attorney and the board of county commissioners, may authorize the board

of county commissioners to employ legal counsel temporarily to assist the prosecuting attorney, the board of county commissioners or any other county board or officer, in any matter of public business coming before such board or officer, and in the prosecution or defense of any action or proceeding in which such county board or officer is a party or has an interest, in its official capacity.”

In view of such statutes, it seems self-evident that it is the legal duty of “the soldiers’ relief commission” of each county to obtain the legal advice necessary for the performance of its duties from the prosecuting attorney for its respective county.

In the first paragraph of the syllabus of *State, ex rel. Smith, v. Maharry*, 97 O. S., 272, the court held:

“All public property and public moneys, whether in the custody of public officers or otherwise, constitute a public trust fund, and all persons, public or private, are charged by law with the knowledge of that fact. Said trust fund can be disbursed only by clear authority of law.”

And in the first, second and third paragraphs of the syllabus of *State, ex rel. The A. Bentley & Sons Company, v. Pierce*, 96 O. S., 44, the court held:

“1. Where the statute places an express limitation upon the amount of money to be expended on any public work by any officer, or board, the contractual power of such officer, or board, is fixed by such statutory limit.”

2. Where the statute delegates power to any administrative board, such as a board of county commissioners, to fix the limit of such public expenditure, and such board so fixes a limit in language free from doubt, there is no right in any court to construe said language, and the power of such administrative board is thereby limited to the amount so fixed.

3. In case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power.”

You do not inquire as to my opinion concerning the legality of the expense, if the members of the board had made the trip in question for some other official purpose and incidentally discussed the legal query referred to in your request. I have, therefore, for the purposes of this opinion, limited my discussion to the payment of the expenses of the trip for the sole and exclusive purpose stated in your letter. I have given no consideration to the

proposition as to whether the expenses of the members of such commission may or may not be legally paid when the purpose of the trip was other than that stated in your request.

Specifically answering your inquiry, it is my opinion that :

1. The prosecuting attorney is the legal adviser to the members of the soldiers' relief commission for the county in which he holds office and for which such members have been appointed.

2. The board of county commissioners is not by Section 2932 of the General Code granted authority to authorize the issuance of warrants for the payment of the traveling expenses of the members of the county soldiers' relief commission to and from Columbus for the sole purpose of a conference with state officials with respect to the legal interpretation which should be given to a statute, since the performance of such act is not a duty of the members of the soldiers' relief commission.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.

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3134.

SALARY—JUSTICE OF PEACE—CONSTABLE—WHEN CORPORATE LIMITS OF CITY AND TOWNSHIP BECOME IDENTICAL—WHERE CITY COUNCIL BY ORDINANCE FIXED SALARY OF SAID TOWNSHIP OFFICERS, SECTION 3512 G. C.—COUNCIL OF MUNICIPALITY, BY ORDINANCE, MAY AT ANY TIME CHANGE SUCH MODE TO FEE BASIS—CHANGE MAY NOT APPLY TO INCUMBENTS DURING EXISTING TERMS.

SYLLABUS:

*When the corporate limits of a city have become indential with those of a township and under authority of Section 3512, General Code, the council of the city has, by ordinance, fixed the salary of the justice of the peace and the constable of said township, the council of said municipality may at*