

1214.

APPROVAL, BONDS OF VILLAGE OF NORTH CANTON, STARK COUNTY—\$5,000.00.

COLUMBUS, OHIO, November 21, 1929.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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1215.

APPROVAL, BONDS OF VILLAGE OF GENEVA-ON-THE-LAKE, ASHTABULA COUNTY—\$25,000.00.

COLUMBUS, OHIO, November 21, 1929.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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1216.

COUNTY AUDITOR—DUTY TO DRAW MONTHLY WARRANTS FOR EMPLOYEES OF COUNTY OFFICIALS EVEN THOUGH SUCH PAYMENTS WILL EXHAUST APPROPRIATION BEFORE END OF YEAR.

**SYLLABUS:**

1. *When the salaries of clerks and deputies in the several county offices have been determined in the manner provided in Section 2981, General Code, the same should be paid monthly from the county treasury, in so far as money has been appropriated therefor and within the limitations imposed by Section 5625-38, General Code.*

2. *When a county official has made expenditures from the annual appropriation made to his office for deputy and clerk hire, to the full limit of six-tenths of the appropriation during the first six months, and continues to certify payrolls thereafter for monthly payments of salary corresponding in amount to one-twelfth of the entire amount fixed for any yearly salary, the county auditor is not justified in refusing to draw warrants in payment of such payrolls as certified even though there remains but four-tenths of the total annual appropriation and to pay the payrolls as certified will exhaust the entire appropriation before the end of the year.*

3. *It is the legal duty of a county auditor to draw warrants in payment of a monthly payroll for deputies and clerks in the various county offices in accordance with the payroll as certified, providing such payroll calls for the payment of a monthly in-*

*stallment of salary no greater than one-twelfth of the amount determined upon as the annual salary of any such deputy or clerk.*

COLUMBUS, OHIO, November 21, 1929.

HON. DON ISHAM, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—I acknowledge receipt of your request for my opinion which reads as follows:

“A situation has arisen in this county by reason of which the following question has been submitted to this office. Will you please give me your opinion of the same?

Under the provisions of Section 5625-38, a county official may make expenditures from the appropriation made to his office for deputy and clerk hire by the county commissioners, in an amount not exceeding six-tenths of the total appropriation during the first six months, providing the employees and compensation have been determined in the manner provided in Section 2981 G. C.

If said official expends the maximum six-tenths of the appropriation during the first six months and continues to certify payrolls that would exhaust the appropriation long before the end of the fiscal year, and the county commissioners have neither the desire nor the money available to increase such appropriation, would the county auditor have the authority to refuse to issue his warrant in payment of such payrolls, and compel the official to revise his payrolls to an amount not exceeding one-sixth of the remainder of the appropriation?”

By the terms of Section 2981, General Code, county officials are authorized to appoint and employ the necessary deputies, assistants, clerks, bookkeepers or other employes for their respective offices, and fix their compensation. Such compensation shall not exceed in the aggregate for each office the amount fixed by the commissioners for such office. When so fixed, the compensation of each duly appointed or employed deputy, clerk or other employe shall be paid monthly from the county treasury upon the warrant of the county auditor.

In an opinion of my predecessor, found in Opinions of the Attorney General for 1927, at page 78, it is held:

“County commissioners have full authority to fix the amount of the appropriation for deputy hire in the various county offices, and each county officer in fixing the compensation to be paid to his deputies, assistants, clerks, bookkeepers and other employes is limited to the amount of the appropriation.

An appropriation measure governing money for deputy hire in county offices when once passed by county commissioners, may be amended by either increasing or reducing the amount appropriated for such purpose, and the county officer appointing such deputies, assistants, clerks, bookkeepers and other employes, cannot expend in any fiscal year a greater sum for the salary of such deputies and other assistants than is fixed in the appropriation measure as amended.”

In a later opinion, found in Opinions of the Attorney General for 1927, at page 267, it is held:

“The aggregate amount of compensation that can be paid to any public

official or employee, for and during any fiscal year, is limited by the amount appropriated therefor.

When an appropriation is made by county commissioners for the yearly compensation of the superintendent and matron of a county children's home which is of a lesser amount than their salaries have theretofore been fixed, it becomes the duty of the trustees of the home to fix the salaries to conform to the appropriation."

Again, in the Opinions of the Attorney General for 1927, at page 2432, it is held:

"Although the board of county commissioners has nothing to do with the question as to the number of deputies, assistants or clerks that may be appointed by the sheriff and other officers of the county for their respective offices, nor with the amount of compensation to be paid any deputy, assistant or clerk in said several offices, the board of county commissioners is charged with the duty, to be exercised in its sound discretion, of making appropriations to pay the compensation of deputies, assistants and clerks in such offices; and the amount that may be expended by the sheriff or other county officers for deputies, assistants or clerk hire, may not in the aggregate exceed the appropriations made by the board of county commissioners for said purpose with respect to the said several county offices."

A similar question was considered by this office in response to which was rendered Opinion No. 119, under date of February 26, 1929, in which it was held:

"It is not the mandatory duty of the county commissioners to appropriate for the compensation of assistants, clerks and stenographers in the office of the prosecuting attorney, an amount of money equal to the aggregate sum allowed for said purpose by the judge or judges of the Common Pleas Court; but such county commissioners may in the exercise of their discretion appropriate for such purpose a sum of money less than that allowed by such judge or judges, and in such case no money can legally be paid out for the compensation of such assistants, clerks and stenographers in excess of the amount appropriated by the county commissioners for said purpose."

In the course of the 1927 opinion, above referred to, found on page 267 of the Opinions of the Attorney General for that year, it is said:

"It is my opinion that when salaries are fixed on a yearly basis, no monthly payroll should be approved or paid which shows on its face that it has been calculated on a basis that would in a twelve month period aggregate more than the amount allowed for the entire year. It is evident that if this rule were not followed, and payments were made each month which in the aggregate would amount to more than was allowed for the twelve month period, it would lead to a situation wherein the fund would be exhausted before the end of the yearly period and the incumbent of the position could not be paid anything for the latter part of the year and in the event a vacancy should occur by death, resignation or otherwise in the office or position there would be no money available from the fund by which a person who was appointed to fill the vacancy might be paid."

While the county commissioners do not fix the salaries of deputies, assistants, clerks and other employes in the county offices, those salaries, however fixed, are

limited by the appropriation made by the commissioners, and in effect, if the appropriation is less than the amount fixed, the action of the commissioners in making the appropriation amounts to the fixing of the salary.

In an opinion No. 1093 rendered by me under date of October 23, 1929, after referring to the language contained in the 1927 opinion found at page 271 of the Opinions of the Attorney General for that year, which language is quoted herein, and noting that since the rendition of that opinion there was enacted the so-called "budget law" including Section 5625-38, General Code, the pertinent part of which is quoted in your letter, the opinion continues:

"In view of this section, (5625-38, General Code) I am of the opinion that the reasoning of Opinion No. 156 of March 8, 1927, *supra*, is no longer applicable, as it is contemplated that there may be a departure from the rule therein laid down."

Said Opinion No. 1093 was rendered in response to a question regarding the payment of the salary of a court stenographer. It appears that a stenographer had been appointed by the court under and by virtue of the provisions of Section 1550 of the General Code, and the salary fixed by the court at \$1800.00 per year. The county commissioners appropriated \$1500.00 only, for the salary of said stenographer. Payrolls were certified to the auditor for the salary of the court stenographer at \$150.00 each month, and the auditor refused to honor the payrolls for the reason that to pay the stenographer at the rate of \$150.00 per month would exhaust the appropriation of \$1500.00 before the end of the period for which the appropriation was made. The auditor apparently was following the 1927 opinion referred to above. Said Opinion No. 1093 holds:

"When a court has fixed the annual compensation of a court stenographer, as provided in Section 1550, General Code, at \$1800.00 per year, and the board of county commissioners has appropriated only \$1500.00 for such purpose, it is the duty of the county auditor to issue his warrant on the county treasurer for the payment of such compensation in the amount of \$150.00 per month until such time as the appropriation shall have become exhausted."

In the course of the opinion, after referring to Section 5625-38, General Code, it is said:

"I am further of the view that this section is dispositive of the question before me. Six-tenths of the appropriation of \$1500.00 is \$900.00, or \$150.00 per month for the first six months, the rate fixed by the court. It follows, of course, in the event an additional appropriation is not made before the end of the year, the funds appropriated will be expended at the end of the tenth month. This is a matter for the consideration of the county commissioners, however, and is not in my opinion a matter within the discretion of the auditor.

The duty imposed by Section 1550, *supra*, upon the auditor to issue warrants for the payment of 'such compensation' is clearly the compensation as is fixed by the court. The issuance of such warrants within the limitations of Section 5625-38, *supra*, does not in my opinion consist in other than the performance of a purely ministerial duty."

The conclusions reached in Opinion No. 1093, above referred to are clearly applicable to the question here under consideration, and the holding of the opinion is clearly dispositive of this question.

I am therefore of the opinion that when the salaries of clerks and deputies in the several county offices have been determined in the manner provided in Section 2981, General Code, the same should be paid monthly from the county treasury, in so far as money has been appropriated therefor, and within the limitations imposed by Section 5625-38, General Code. When a county official has made expenditures from the annual appropriation made to his office for deputy and clerk hire, to the full limit of six-tenths of the appropriation during the first six months, and continues to certify payrolls thereafter for monthly payments of salary corresponding in amount to one-twelfth of the entire amount fixed for any yearly salary, the county auditor is not justified in refusing to draw warrants in payment of such payrolls as certified even though there remains but four-tenths of the total annual appropriation, and to pay the payrolls as certified will exhaust the entire appropriation before the end of the year. The auditor should draw warrants in payment of the payrolls as certified, providing such payroll calls for a monthly salary for such deputies and clerks amounting to no more than one-twelfth of the amount determined upon as an annual salary.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

1217.

APPROVAL, CONTRACT FOR GRADE CROSSING SEPARATION OVER  
ERIE RAILROAD, NEAR SPRINGFIELD, CLARK COUNTY.

COLUMBUS, OHIO, November 21, 1929.

HON. ROBERT N. Waid, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter under date of November 21, 1929, enclosing copy of a contract relative to the separation of a crossing at grade of the Erie Railroad Company tracks and the National Road just west of Springfield (S. H. 1, U. S. 40), in which the I. C. & E. Traction Company is a party.

I have carefully examined the agreement, signed by the Receiver of the I. C. & E. Traction Company, find it correct in form, and hereby approve the same.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

1218.

APPROVAL, ABSTRACT OF TITLE TO LAND OF SARAH E. FISHER  
IN THE CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, November 21, 1929.

HON. CARL E. STEEB, *Business Manager, Ohio State University, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval an abstract of title, warranty deed form, and encumbrance estimate relating to the proposed purchase by the State of Ohio of Lot No. 32 in R. P. Woodruff's Subdi-