

Your attention is directed to Section 2293-4 of the General Code as enacted by the 87th General Assembly (112 v. 365), which reads as follows:

"In anticipation of the collection of current revenues in and for any fiscal year, the taxing authority of any subdivision may borrow money and issue notes therefor, but the aggregate of such loans shall not exceed one-half of the amount estimated to be received from the next ensuing semi-annual settlement of taxes for such fiscal year as estimated by the budget commission, other than taxes to be received for the payment of debt charges, and all advances. The sums so anticipated shall be deemed appropriated for the payment of such notes at maturity. The notes shall not run for a longer period than six months and the proceeds therefrom shall be used only for the purposes for which the anticipated taxes were levied, collected and appropriated. No subdivision shall borrow money or issue certificates in anticipation of the February tax settlement before January first of the year of such tax settlement."

In so far as the question here is concerned, the provisions of this statute are so plain that no interpretation is necessary. You will observe that by the terms of this section, in anticipation of the collection of current revenue in and for any fiscal year the taxing authority of any subdivision may borrow money and issue notes therefor subject to the limitations prescribed by such section; provided, however, that no subdivision is authorized to "borrow money or issue certificates in anticipation of the February tax settlement before January first of the year of such settlement." This provision last quoted would clearly prohibit your county commissioners borrowing money in anticipation of the February tax settlement, and it is my opinion that your question must therefore be answered in the negative.

In conclusion, and in specific answer to your question, it is my opinion that because of the express limitation contained in Section 2293-4, General Code, a board of county commissioners may not prior to January 1, 1929, issue a certificate of indebtedness in anticipation of the February tax settlement, 1929, for the purpose of providing funds to pay the necessary expenses of conducting the election to be held in November, 1928. A board of deputy state supervisors of elections, however, is authorized to make contracts and give orders involving the expenditure of money to cover the necessary expenses of conducting said election, notwithstanding the fact that sufficient funds are not now in the county treasury to pay such obligations so incurred, and it is the duty of the county commissioners to pay such obligations when funds shall have become available.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2630.

HUMANE SOCIETY AGENT—PAY FROM COUNTY COMMISSIONERS
DOES NOT PRECLUDE FURTHER PAYMENT FROM SOCIETY.

SYLLABUS:

When, in accordance with the provisions of Section 10072, General Code, a board of county commissioners has appropriated money to be paid to a humane society agent, such humane society is not thereby precluded from paying such agent an amount as salary in addition to such amount appropriated by said commissioners.

COLUMBUS, OHIO, September 27, 1928.

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

GENTLEMEN:—This will acknowledge your letter of September 19, 1928, which reads:

“You are respectfully requested to render this department your written opinion upon the following:

Section 10070 of the General Code provides for the appointment by the humane society of agents with certain powers. Section 10071, G. C., provides that such appointments for counties shall be approved by the probate judge of the county. Section 10072, G. C., provides that 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 from the general revenue fund of the county such salary as they deem just and reasonable. The section further provides that this salary shall not be less than \$25.00 per month.

Question: When the county commissioners have fixed the salary of the humane agent, as provided in this section, may the humane society pay to such agent any amount by way of salary in addition to the amount so fixed by the county commissioners?”

Section 10067, General Code, provides *inter alia* that:

“Societies for the prevention of acts of cruelty to animals may be organized in any county * * *.”

Section 10069, General Code, provides:

“Such societies may elect such officers, and make such rules, regulations, and by-laws, as are deemed expedient by their members for their own government, and the proper management of their affairs.”

Section 10070, General Code, provides in part as follows:

“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. * * *”

By the terms of Sections 10071, General Code,

“All appointments by such societies under the next preceding sections shall have the approval of the mayor of the city or villages for which they are made. If the society exists outside of a city or village, appointments shall be approved by the probate judge of the county for which they are made. * * *”

Section 10072, General Code, in so far as pertinent, provides:

“* * * 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 amount of salary to be paid monthly * * * 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 the case of *State ex rel. The Coshocton Humane Society vs. Ashman, Probate Judge*, 90 O. S. 200, it was held that a probate judge, when called upon to approve the appointment of an agent for such society, has discretion to determine not only whether the person named is a proper person for the discharge of such duties, but also whether there is such necessity for the appointment as would justify the payment of the expense out of the public treasury. In its opinion the Court said at page 201:

"The statutes relating to the subject comprise Sections 10062 to 10084 General Code, inclusive. They authorize the society to make appointments of agents without the approval of the probate judge, or any other officer, and the approval if given accomplishes but one purpose, possibly two. It does authorize the payment of the agents' compensation out of the funds of the county and possibly it adds to the agents' authority in making arrests. But the fact that the absence of the approval of the probate judge protects the county from the payment of salary or compensation to the agent must, we think, be regarded as vesting in the probate judge a discretion to determine whether, in view of all conditions existing, there is a public necessity for such appointment."

In a former opinion of this office, which appears in the Annual Report of the Attorney General for 1912, Vol. II, at page 1614, the following language appears:

"The status of the humane society agent appointed for a municipal corporation is peculiar. Assuming the validity of the law which is not called into question by your queries, it appears, I think, that this agent is not an officer of the municipal corporation at all, although his compensation is to be paid by the municipality. In the first instance, he is an officer or agent of the society. Clearly he is an appointee of the society and not of the municipality. The power of the mayor, to be exercised in connection with his appointment, is not that of appointment itself, but that of confirmation. Now, the tenure of office of such an agent is not prescribed by any provision of law. Upon elementary principles, then, such agent holds his office at the pleasure of the appointing authority. * * * From what has been said it follows, of course, that the humane officer is not an officer of the municipal corporation."

Although the foregoing refers to a humane society agent appointed for a municipal corporation, the same may be said of a humane society agent appointed by a society existing outside of a city or village. In other words, an agent appointed by such a society, whose appointment is approved by the probate judge of the county, is not an officer of such county.

The syllabus of an opinion which appears in the Annual Report of the Attorney General for 1914, Vol. I, at page 503, reads:

"In order to discharge a humane agent united action of the humane society and of the probate judge is necessary. The humane agent being in the employ of the humane society, a corporation, is not within the civil service."

In the opinion it was said as follows:

“The humane agent is in the employ of the humane society, a corporation. He is engaged in a public duty and for performing this duty, the county or municipality is authorized to pay him a compensation. He is not, in my opinion in the service of the state, the county, or of the city, within the meaning of section one of the civil service act.”

Inasmuch as a humane agent is not an officer of the county, I know of no rule or principle of law to prevent a humane society from supplementing the amount the county commissioners appropriate as salary to such agent, in accordance with Section 10072, General Code, with such additional salary as it may deem proper. Such agents, although engaged in public or quasi-public duties, are nevertheless agents in the employ of the humane society, a corporation.

Answering your question specifically, I am of the opinion that when, in accordance with the provisions of Section 10072, General Code, a board of county commissioners has appropriated money to be paid to a humane society agent, such humane society is not thereby precluded from paying such agent an amount as salary in addition to such amount appropriated by such commissioners.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2631.

APPROVAL, NOTES OF THE VILLAGE OF PARMA, CUYAHOGA COUNTY
—\$137,067.00.

COLUMBUS, OHIO, September 27, 1928.

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

2632.

COUNTY COMMISSIONERS—WIDENING OF STATE ROAD OVER 18
FEET—CO-OPERATION WITH DIRECTOR OF HIGHWAYS—PERCENT-
AGE OF COST—ASSESSMENT DISCUSSED.

SYLLABUS:

1. *A proposal to cooperate with the state in the widening of a state road over eighteen feet may be made by the county commissioners upon a certain percentage of the cost of such excess pavement or such proposal may agree to pay a lump sum toward such excess cost, provided that the amount thereof does not exceed the amount which the county is authorized to contribute toward such improvement.*