

to state that the previous opinion was affirmed, subject, however, to the qualification that since the Court of Appeals of the Second Judicial District has reached a contrary conclusion, that decision is the law of that district and administrative officers in that particular district would be justified in following the rule laid down by the Court of Appeals unless and until reversed by a court of equal or superior authority.

The conclusions of the opinion last referred to are, in my opinion, sound and I am, therefore, of the opinion that public funds cannot, under present existing law, be used to pay the premium upon a policy of holdup insurance issued to protect the public money collected by county treasurers against holdup while transporting such money to banks for deposit, subject, however, to qualification that public authorities within the Second Judicial District of Ohio would be justified in following the rule laid down by the Court of Appeals of that district authorizing such expenditure unless and until that rule be reversed by a court of equal or superior authority.

For your information I am enclosing herewith copies of Opinions Nos. 527 and 1221, to which reference has been made.

This conclusion would not, of course, prevent the county treasurer from personally insuring the money for which he is responsible against holdup or other contingencies which might result in loss. As you point out, county treasurers are personally responsible for monies collected by them and their bondsmen would be liable in the event of any loss of public funds, irrespective of whether or not fault or negligence could be imputed to the officials. This subject is discussed in Opinion No. 527, a copy of which is enclosed. From that opinion I quote the following:

"It is the duty of the county commissioners to protect the county by securing this bond from the treasurer, but the treasurer himself, if he feels the necessity therefor, may take such means as he thinks proper to protect himself against the dangers incident to possible forgery or burglary."

I think it follows, therefore, that a county treasurer, or those liable upon his official bond, may, if they deem it advisable, take out holdup insurance to protect the tax monies for which he is responsible. This, however, would be a personal matter and payment therefor would have to be made personally and could not be made from the public funds, subject to the qualification hereinabove set forth.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1686.

SOLDIERS' RELIEF COMMISSION—APPOINTMENT OF MEMBER, DISCUSSED.

*SYLLABUS:*

*Where it is possible for a suitable member of the Soldiers' Relief Commission to be appointed who is a wife or widow of an honorably discharged soldier, sailor or marine of the Civil War or the Spanish-American War, it is mandatory upon*

*the Court of Common Pleas in making such appointment to select such suitable person for appointment to said commission.*

COLUMBUS, OHIO, February 8, 1928.

HON. E. B. UNVERFERTH, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

“Section 2930 of the General Code provides in substance for the appointment of a soldiers’ relief commission and specifies ‘that three persons residents of the county shall each serve for a period of three years and wherever possible one member of said commission shall be the wife or widow of an honorably discharged soldier, sailor or marine of the Civil or Spanish-American war.’

Would you kindly let me know at the earliest possible moment whether this might be construed to include the wife of an honorably discharged soldier, sailor or marine of the World War. It appears to me that the language here is specific, but I desire that you make a holding on this matter.”

Section 2930, General Code, involved in your inquiry, is as follows:

“There shall be a commission known and designated as ‘the soldiers’ relief commission,’ in each county, composed of three persons, residents of the county, each of whom shall serve for three years, and wherever possible one member of said commission shall be a wife or widow of an honorably discharged soldier, sailor or marine of the Civil War or of the Spanish-American War. Two of the persons so appointed shall be honorably discharged soldiers, sailors or marines of the United States. On or before the first Monday in April of each year, a judge of the Court of Common Pleas in such county shall appoint a commissioner for such term.”

It will be noted that this section was amended in House Bill No. 55, passed by the 82nd General Assembly, March 6, 1917, and approved, March 19, 1917. You inquire whether this section might be construed to permit the wife of an honorably discharged soldier, sailor or marine of the World War to be appointed on this “Soldiers’ Relief Commission.” You will observe from the date of the passage of this act that it was prior to the entrance of the United States in the World War. It is therefore clearly apparent that the Legislature could not have intended any such appointment at that time. The section provides that “two of the persons so appointed shall be honorably discharged soldiers, sailors or marines of the United States.” It will also be observed that the language used relative to the other member of the commission is “wherever possible one member of said commission shall be a wife or widow of an honorably discharged soldier, sailor or marine of the Civil War or of the Spanish-American War.”

If a condition should arise in any given county where it would not be possible to appoint a wife or widow of an honorably discharged soldier, sailor or marine of the Civil War or of the Spanish-American War, then the Common Pleas Court in his appointive power might select another suitable person for appointment. There seems to be no limitation on the appointing power in a case where that condition should be found to exist, and under those circumstances, if they should exist, the wife or widow of an honorably discharged soldier, sailor or marine of the World War

might be selected as a suitable person for appointment. However, that would be in a case where the unusual and improbable condition would exist that it would not be possible to appoint the wife or widow of an honorably discharged soldier, sailor or marine of the Civil War or of the Spanish-American War.

It is therefore my opinion that where it is possible for a suitable member of said commission to be appointed who is a wife or widow of an honorably discharged soldier, sailor or marine of the Civil War or of the Spanish-American War, it is mandatory upon the Court of Common Pleas in making such appointment to select such suitable person for appointment to said commission.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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1687.

MOTOR TRUCKS—REDUCTION OF ALLOWABLE WEIGHT AND SPEED  
UNDER SECTION 7250, GENERAL CODE—DIRECTOR OF HIGHWAYS  
AUTHORIZED TO DIFFERENTIATE AMONG DIFFERENT CLASSIFI-  
CATIONS.

*SYLLABUS:*

*When exercising the discretion conferred upon him by Section 7250 of the General Code, as amended (112 v. 249), the Director of Highways is authorized to differentiate among the different classifications of vehicles enumerated in Sections 7248 and 7249, General Code, and is not required to make the same reductions of maximum weight of vehicle and load or maximum speed, or both, of motor vehicles equipped with tires of rubber or other similar substance and vehicles equipped with steel tires. In making such reductions, however, he is required to follow the classifications set forth in Sections 7248 and 7249, General Code, and cannot create new classifications.*

COLUMBUS, OHIO, February 9, 1928.

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

DEAR SIR:—Receipt is acknowledged of your communication of recent date requesting my opinion as follows:

“I am attaching hereto letter received from Mr. T. R. D., vice president of the W. Company of Cleveland, Ohio, and also certain exhibits which accompany his communication.

The question I wish to refer to you for opinion is whether under the law the director of this department has been given the discretion to differentiate between different types of vehicles, particularly as to the type of tires, in making the reduction in load limits under Section 7250 of the General Code.

A conference was had with reference to this matter attended by Mr. D., Mr. G. M. of your department and the writer. I agree with Mr. D. that the amount of damage done to roads by balloon tires is much less than in the case of motor vehicles equipped with solid rubber or steel tires. The question in my mind, as stated before, is whether the law gives me the right to differentiate between motor vehicles equipped with various types of tires.