

The authority therein conferred to sell the surplus product of the public utility is limited to an amount not exceeding fifty per centum of the total product supplied by such utility within the municipality. A village would, therefore, be limited in the sale of electric light and power outside of its borders to an amount not in excess of fifty per centum of the amount supplied within its borders. Subject to this limitation, it is my opinion that the constitutional section just quoted would give authority to the village to extend its electric light and power lines outside of the municipality and irrespective of the five mile limitation. In other words, I am of the opinion that Section 3966 of the Code, even though it contained an express limitation, would not be effective as against constitutional authority to sell surplus product. At the same time, Section 3966 is essential to the right of the village to make use of the public streets, roads, alleys and public grounds outside of the village, and, in so far as this right is concerned, the statutory limitation would be effective.

As I have before stated, however, the present language of Section 3966 of the General Code is such that there is no limitation upon the extension of electric light and power lines by a village outside of the corporate limits.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1685.

COUNTY TREASURER—BURGLARY INSURANCE—OPINIONS NO. 527
AND 1221 FOLLOWED.

SYLLABUS:

Opinions Nos. 527 and 1221 followed.

COLUMBUS, OHIO, February 8, 1928.

HON. BERT B. BUCKLEY, *Treasurer of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your recent communication, as follows:

“The opinion of the Attorney General is requested on the question as to whether county treasurers are permitted to insure tax money collected by them, and for which they are responsible, against holdup outside the premises while transporting the money to the bank for deposit; and also whether public funds could be used, under the present existing law, to pay the premium for such a policy.”

In Opinion No. 527 of this department, rendered on May 24, 1927, it was held that county commissioners cannot legally pay for burglary or holdup insurance for the county treasurer or any other county officer. That opinion is a specific answer to your second inquiry.

Subsequently, however, in Opinion No. 1221, dated October 31, 1927, this department again considered the question in the light of the decision of the Court of Appeals of Clark County holding to the contrary. A complete discussion of that decision, coupled with the general authorities, is therein contained and I deem it unnecessary again to restate the reasoning and conclusions reached. It is sufficient

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