

Note from the Attorney General's Office:

1937 Op. Att'y Gen. No. 37-0134 was overruled by
1981 Op. Att'y Gen. No. 81-040.

133.

APPROVAL—BONDS OF CITY OF SALEM, COLUMBIANA
COUNTY, OHIO, \$40,000.00.

COLUMBUS, OHIO, February 15, 1937.

Industrial Commission of Ohio, Columbus, Ohio.

134.

COUNTY COMMISSIONERS—POWER TO APPOINT ASSIST-
ANT CLERK, DUTIES, WHEN.

SYLLABUS:

A board of county commissioners is without power under Section 2409, General Code, to appoint an assistant clerk of the board, whose duties would be to make trips to Columbus, Ohio, for the purpose of conferring with legislative committees relative to proposed legislation which would affect the county and its subdivisions.

COLUMBUS, OHIO, February 16, 1937.

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

GENTLEMEN: I acknowledge receipt of your communication of recent date, viz:

“You are respectfully requested to furnish this office your written opinion upon the following:

In Cuyahoga County it has become the practice for the county officials and the officials of the City of Cleveland and various other municipalities within the county, to make several trips to Columbus for the purpose of conferring with the Committees of the Legislature on proposed legislation which would affect the county and its subdivisions.

The following is proposed: That the board of county commissioners employ, as assistant clerk, under the provisions of Section 2409, General Code, a person conversant with the need of the county in regard to legislative measures, etc.; that such person be paid a salary from the county which would include an amount sufficient to cover all traveling and other expenses;

and it is suggested that by arrangement with the City of Cleveland and other taxing districts it might be possible to have these districts contribute to the county toward this assistant clerk's salary. The duty of such assistant clerk would be to represent the board of commissioners and other county officials in an informal manner on all matters of interest to the county and other subdivisions, which would eliminate the necessity of these officials traveling to and from Columbus on purely legislative matters.

QUESTION: Would the employment of such a person as assistant clerk to the county commissioners, for the purposes indicated, be a legal use of the county's funds?

QUESTION: Would there be any authority for the City of Cleveland and other taxing districts to contribute to the county a part of such assistant clerk's salary?"

As a matter of law, you present just one question, viz.: Can the County Commissioners of Cuyahoga County appoint an assistant clerk under favor of Section 2409, General Code, to make trips to Columbus for the purpose of conferring with committees of the Legislature on proposed legislation which would affect the county and its subdivisions?

The question is purely statutory, and it does not involve a question of statutory construction as the few sections that bear on the question are so clear as to need no construction. When the first question is answered, the subsidiary questions fade out of the picture.

Section 2566 General Code, provides in substance that the county auditor *virtute officii* shall be the secretary of the county commissioners, except as otherwise provided by law. When so requested, he shall aid them in the performance of their duties. He shall keep an accurate record of all their proceedings, and carefully preserve all documents, books, records, maps and papers required to be deposited and kept in his office.

Section 2409, General Code, provides in substance, that if such board (the county commissioners) finds it necessary for the clerk to devote his entire time to the discharge of the duties of such position, it may appoint a clerk in place of the county auditor, and such necessary assistants to such clerk as the board deems necessary. Such clerk shall perform the duties required by law and by the board.

Section 2406, General Code, defines more specifically the duties of such clerk, as follows:

"The clerk shall keep a full record of the proceedings of the board, and a general index thereof, in a suitable book provided for that purpose, entering each motion with the name of the

person making it on the record. He shall call and record the yeas and nays on each motion which involves the levying of taxes or the appropriation or payment of money. He shall state fully and clearly in the record any question relating to the power and duties of the board which is raised for its consideration by any person having an interest therein, together with the decision thereon, and shall call and record the yeas and nays by which the decision was made. When requested by a party interested in the proceedings or by his counsel, he shall record any legal proposition decided by the board, the decision thereon and the votes by which the decision was reached. If either party, in person or by counsel, except to such decision, the clerk shall record the exceptions with the record of the decision."

It is not the name by which a public official is generally known, or even the name that the General Assembly may prescribe for the office that determines the legal status of the officer. In the last analysis the legal character of the office must be determined from the nature of the duties required of him under the law. The people generally and even the legislature might denominate the clerk of the board of county commissioners a judge, but if, upon examination of the laws of the state it would be found that he had not been invested by the legislative authority with judicial power, but instead had been delegated all necessary power to perform the duties of clerk of the board of county commissioners, he would still be the clerk of the board of county commissioners, notwithstanding the fact that the people and the legislature called him "judge."

It is certainly patent that the clerk of the board of county commissioners is a clerk in fact. His duties are defined by statute and they are purely clerical. The stream can rise no higher than its source. The clerk's assistants have only such power and can perform only such duties as are delegated to the clerk by statute.

The General Assembly has not, as yet, imposed upon such clerk the duty of conferring with legislative committees, nor has it empowered him to make trips to Columbus for that purpose. The last sentence of Section 2409, General Code, viz :

"Such clerk shall perform the duties required by law and by the board."

is a bit confusing. It is not strange that the lay mind should infer from such sentence that the clerk could not only perform the duties required by law, but he could likewise perform any duty required by the board, whether it was required by law or not. In arriving at such a conclusion

it would be necessary to disregard the law relative to the board of county commissioners.

County commissioners, like their clerks, are creatures of statute. They have only such powers as are expressly delegated by the General Assembly, and such incidental powers as are necessary to carry into effect the powers expressly delegated. The board of county commissioners has power to require its clerk to perform his legal duties and no more; nor can such board require of an assistant clerk that which it could not lawfully require of its clerk.

In my opinion the Board of County Commissioners is without power under Section 2409, General Code, to appoint an assistant clerk of the board, whose duties would be to make trips to Columbus, Ohio, for the purpose of conferring with legislative committees relative to proposed legislation which would affect the county and its subdivisions.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

135.

SUPERINTENDENT OF COUNTY INFIRMARY—DISCRETION
IN ADMITTING A COUNTY CHARGE—ACTION TO COM-
PEL, WHEN—LEGAL SETTLEMENT—DUTY OF TOWN-
SHIP TRUSTEES, RELIEF, WHEN.

SYLLABUS:

1. *Under the provisions of Section 2544, General Code, the superintendent of the infirmary of a county must be satisfied that a person should become a county charge before accepting him as an inmate from a township and such superintendent is authorized to use discretion as to such admission. There is no type of action which the township trustees can bring to compel such superintendent to admit a person to the county infirmary; unless and until said superintendent is so satisfied.*

2. *Where legal settlement is had by a person in need of relief within a township, it continues to be the duty of township trustees of such township to grant the necessary relief to that person after he has been refused admission to the county infirmary by the superintendent thereof, for the*