

inconsistent with the constitution and laws of the State of Ohio and of the United States, and I am therefore returning said Certificate to you with my approval endorsed thereon.

I notice that the name of H. T. Marshall, Notary Public, is not printed and his seal is not affixed to the certificate. However, I think this is immaterial since section 9594, General Code, does not require the certificate to be acknowledged.

Respectfully,

JOHN W. BRICKER,

Attorney General.

91.

REVENUE STAMPS—COUNTY COMMISSIONERS UNAUTHORIZED
TO LOAN MONEY TO COUNTY RECORDER TO PURCHASE
STAMPS FOR DEEDS.

SYLLABUS:

1. *The authority of a county commissioner or a board of county commissioners to act in financial transactions must be clear and distinctly granted by statute.*
2. *Where such authority is doubtful, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.*
3. *There is no legal authority for the county commissioners of a county to make a loan or a deposit of a sum of money with the county recorder where such sum of money is to be used to purchase revenue stamps for deeds or other instruments of transfer of real estate.*

COLUMBUS, OHIO, January 31, 1933.

HON. LESTER S. REID, *Prosecuting Attorney, Chillicothe, Ohio.*

DEAR SIR:—Your request for an opinion of recent date reads as follows:

“Kindly render me an opinion as to whether it is within the law for the county commissioners of this court to make a loan or a deposit of one hundred dollars with the county recorder of this county for the purpose of said recorder to purchase revenue stamps for deeds which are to be sold to persons making transfers of real estate. If this is proper, kindly advise how such money may be advanced to him. The situation will be that he will always have one hundred dollars in money or stamps in his office and that as stamps are used his intentions are to replace stamps at various intervals and thus have a continual supply on hand.”

The solution of the question submitted, with respect to the power and authority of a board of county commissioners to make a loan or a deposit of a sum of money with the county recorder of a county, the same to be used to purchase revenue stamps for deeds or instruments of transfer of real estate, depends upon the construction to be placed upon the statutes granting administrative authority to such county commissioners.

It has been held in substance by the Supreme Court of Ohio in the case of *Board of County Commissioners of Portage County vs. Gates*, 83 O. S. 19, 30, that the function of the county is to serve as an agency or instrumentality of the state for purposes of political organization and local administration and such subdivision has only such powers and authority as may be conferred by the legislature. The legislature having power to create, likewise has power to dissolve, and officers of the county in the administration of their political duties are guided only by legislative provision. This is particularly true as to the collection, custody and disbursement of public funds, as has been held in the case of *State of Ohio, ex rel. Alvin D. Alexander vs. L. H. Oviatt, et al.*, 4 O. N. P. (N. S.) 481, 488, and affirmed in 8 O. C. C. (N. S.) 567.

In the case of *Jones vs. Lucas County*, 57 O. S. 189, 213, it is further borne out that their authority in this respect extends only so far as is given by statute, and it is established in *State, ex rel. vs. Menning*, 95 O. S. 97, 99, that the authority of county officers to act in financial transactions must be clear and distinctly granted and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed against the county.

Coming to that portion of your letter asking whether it is within the law for the county commissioners of a county to make a loan or a deposit of one hundred dollars with the county recorder for the purpose of purchasing revenue stamps, I am led to the impression that, unless statutory authority to make such loan or deposit is clear and distinctly granted, the commissioners have no such authority, and it is not within the law to make such loan or deposit.

Section 2419, General Code, provides that the county commissioners shall furnish such facilities as will result in the expeditious and economical administration of county offices, but Section 2419 does not in my opinion imply that a board of county commissioners may deposit or loan a sum of money to a county officer for the purposes stated therein. I find no other statute clearly or impliedly authorizing such deposit or loan.

It is to be noted that the provisions of the federal revenue act impose no obligation upon the recorder with respect to the affixing of revenue stamps. This is the duty of those filing the instrument for record and whatever facilities would be furnished by the recorder in this respect would be entirely gratuitous. As a convenience to the public, he doubtless could keep on hand at his office revenue stamps, provided their purchase was not made from public funds, but I know of no authority to expend county money for a purpose of this kind.

It is therefore my opinion that:

1. The authority of a county commissioner or a board of county commissioners to act in financial transactions must be clear and distinctly granted by statute.

2. Where such authority is doubtful, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.

3. There is no legal authority for the county commissioners of a county to make a loan or a deposit of a sum of money with the county recorder where

such sum of money is to be used to purchase revenue stamps for deeds or other instruments of transfer of real estate.

Respectfully,
JOHN W. BRICKER,
Attorney General.

92.

PROSECUTING ATTORNEY—ENTITLED TO AN ADVANCE OF ONE-HALF REDUCED SALARY UNDER SECTION 3004, GENERAL CODE—TELEPHONE BILLS PAID FROM GENERAL FUND.

SYLLABUS:

1. *During each of the years 1933 and 1934, prosecuting attorneys may only be allowed, under the terms of section 3004, General Code, the sum of one-half the amount computed by applying the reduction schedule set forth in section 3 of Amended Substitute House Bill No. 1 of the 89th General Assembly, third special session, to the sum total determined under the provisions of section 3003, General Code.*

2. *Telephone toll bills of the office of the prosecuting attorney are payable from the appropriation "supplies and facilities" appropriated from the general fund of the county.*

COLUMBUS, OHIO, January 31, 1933.

HON. EDWIN S. DIEHL, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

"Kindly give me your opinion on the following question:

The salary of the Prosecuting Attorney of Defiance County based upon the 1930 census is \$1250, which entitled the Prosecuting Attorney to an allowance of \$625 annually to be drawn immediately when he takes office under the provisions of Section 3004, which of course must be accounted for under the provision of said section.

In view of the recent action of the legislature the Prosecuting Attorney's salary of Defiance County has been reduced to \$1175. Kindly advise whether the Prosecuting Attorney under the provisions of Section 3004 shall demand the sum of \$625 or the sum of \$587.

Also advise whether in your opinion telephone toll bills of the office of the Prosecuting Attorney shall be paid out of the fund created under 3004 or from the General Fund of the County. It is necessary that this opinion be forthcoming as soon as possible in order that the County Commissioners may properly determine the budget for the ensuing year."

Sections 1, 3 and 6 of Amended Substitute House Bill No. 1 of the 89th General Assembly, third special session, read as follows: