

I can find no other reference in the statutes relating to the department of health which authorizes an appeal to the public health council in the matter of approval or disapproval of plans in matters required to be submitted to the state board of health for approval. The evident intent to give the public health council authority to hear evidence on appeals would be, in my opinion, sufficient authority to permit an appeal from an order of the director of health in such matters.

The usual rules in matters of appeal are that the only persons who may appeal the matter from the determination of a court or of a quasi-judicial body are the persons interested in such decisions.

In the present instance, the city submitted to the director of health for approval a location for a sewage treatment plant for the city. In this instance an improvement association has requested a hearing in the nature of an appeal from the action of the director of health. The only persons upon whom the order of the director of health in the approval of such plan would be binding would be the officials of the city in question. The order would not be binding upon any person not connected with the city government.

It is therefore my opinion that the only persons who may appeal to the public health council from a decision of the director of health in a matter relating to the approval or disapproval of plans, locations, estimates of costs or other matters submitted to such board, are persons or officials directly interested and subject to such decision of the director.

Respectfully,

C. C. CRABBE,

Attorney General.

2771.

CONTRACTS—SECTION SEVEN OF AMENDED SUBSTITUTE SENATE
BILL NO. 94 (SECTION 5660 G. C.) CONSTRUED.

SYLLABUS:

1. *By the terms of senate bill No. 94, contracts may be entered into for the full school year beginning July 1, 1925, and ending June 30, 1926, when the fiscal officer certifies that there are sufficient funds to meet such contracts to January 1, 1926.*

2. *Bills for expenditures for supplies, stationery, books and incidental expenses must be certified by the county auditor before they can be approved by the county commissioners.*

COLUMBUS, OHIO, Sept. 10, 1925.

HON. LISLE M. WEAVER, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR:—I am in receipt of your communication, reading as follows:

“Two problems have been presented to me, involving an interpretation of section 7 of senate bill 94, passed by the recent legislature, and I would like to have an opinion from you with respect to the same.

“Section 7 of senate bill 94 states in substance that no contract, agreement or other obligation calling for or requiring the expenditure of the public fund shall be paid except upon the presentation of a certificate from the county auditor or the fiscal officer, that the money is certified into the

public fund or in the process of collection. This law as it pertains to the two problems I herewith present are as follows:

"One of our local school districts have contracted for the hiring of teachers for this coming school year. They expect to vote on a three mill levy in November and have engaged these teachers upon the expectation of this levy passing. If the levy fails, they will be short approximately \$9,000.00 in the operation of their schools for the coming school year. In view of this situation and in view of the provisions of section 7 of senate bill 94, where the clerk could not properly certify the total amount of funds in the process of collection, could this board legally enter into contracts for the hiring of teachers and for the operating of schools?"

"The other proposition involving the interpretation of this section is whether or not in your opinion this particular law requires the county auditor to certify bills for expenditures for supplies, stationery, books and incidental expenses from the general fund of the county before they can be approved by the county commissioners once each week; or whether the interpretation of this section would mean a certain contract or agreement for the purchase of some particular thing by the commissioners."

Section 7 of amended substitute senate bill No. 94 in part provides as follows:

"No contract, agreement or other obligation calling for or requiring for its performance the expenditure of public funds from whatsoever source derived, shall be made or assumed by any authority, officer, or employee of any county or political subdivision or taxing district, nor shall any order for the payment or expenditure of money be approved by the county commissioners, council or by any body, board, officer or employee of any such subdivision or taxing district, unless the auditor or chief fiscal officer thereof first certifies that the money required to meet such contract, agreement or other obligation, or to make such payment or expenditure has been lawfully appropriated or authorized or directed for such purpose and is in the treasury or in process of collection to the credit of the appropriate fund free from any previous and then outstanding obligation or certification, which certificate shall be filed with such authority, officer, employee, commissioners, council, body or board, or the chief clerk thereof."

This part of section 7 prohibits the entering into of a contract or agreement or other obligation calling for or requiring the expenditure of public funds unless the chief fiscal officer of the subdivision first certifies that the money required to meet such contract has been lawfully appropriated and is in the treasury or in the process of collection, to the credit of such fund. The latter part of the same section provides as follows:

"In the case of contracts running beyond the termination of the fiscal year in which they are made for salaries of educational employes of boards of education, or for street lighting, collection or disposal of garbage or other current services for which contracts may be lawfully made extending beyond the end of the fiscal year in which made, or to the making of leases, the term of which runs beyond the termination of the fiscal year in which they are made, the certification of the auditor or chief fiscal officer as to money in the treasury or in process of collection, above required as a condition precedent to the making of such contract or lease shall be deemed sufficient if such certification cover the money required to meet such contract or lease

throughout the fiscal year in which such contract or lease be made; provided further that in each subsequent fiscal year in which such contract or lease is in effect, the auditor or fiscal officer shall make a certification for the amount required to meet the obligation of such contract or lease maturing in such year. In all such contracts or leases, the amount of the obligation remaining unfulfilled at the end of a fiscal year, and which will become payable during the next fiscal year, shall be included in the appropriations for such next year."

This section would seem to infer that in the case of contract for salaries of educational employes of boards of education, which extend beyond the fiscal year in which said contract is made, they may be entered into when the certificate of the chief fiscal officer covers the money required to meet such contract throughout the fiscal year in which such contract or lease is made. This permits entering into contracts for the employment of teachers when there are sufficient funds appropriated for such purpose in the treasury or in process of collection, applicable to the fiscal year in which such contract is made, to meet the contract during such fiscal year. Under this section, the boards of education may enter into contracts for the employment of teachers when they have the certificates that there are sufficient funds in the treasury or in the process of collection to pay the salaries of such employes to January 1, 1926.

Section 1 of this act in part provides as follows:

"All provisions of law heretofore or hereafter enacted and relating to the levying of taxes, the collection, appropriation or expenditure of revenues, or the making of financial reports or statements for a fiscal year or other year shall be construed to refer and apply to the fiscal year as herein defined, * * *."

If this provision is controlling with reference to contracts entered into for the fiscal year as defined by this act, which would be the year commencing January 1st, 1926, when there would be no existing law covering the entering into contracts for the period from the time of the going into effect of this act until January 1st, 1926. This is for the reason that sections 5660 and 5661, General Code, are repealed by this act, which repeal was effective July 21st, 1925.

In view of the fact that sections 5660 and 5661, General Code, have been a part of the law of this state for so many years it is believed that it cannot be said that it was the intention of the legislature to take away all restraint in connection with the entering into contracts for the expenditure of public funds.

You are therefore advised that if there is sufficient money in the treasury of the school district to cover all contracts to January 1, 1926, contracts may be entered into for the full school year, which runs until June 30, 1926. The certificate for the remainder of such salary to be paid in the year 1926 should be made at the beginning of the fiscal year.

Section 7 provides that no expenditure shall be made unless authorized by appropriation, both as regards purpose and amount and that no contract, agreement or other obligation calling for or requiring the expenditure of public moneys shall be made by any officer unless the chief fiscal officer first certifies that the money required to meet such contract is in the treasury or in process of collection to the credit of such fund. This would seem to cover all contracts, agreements or obligations or the expenditure of any money except the proceeds of bonds without having the auditor first certify that there are funds in an amount to meet the same. I can find nowhere in this enactment any authority to except from the operation of

such law expenditures for supplies, stationery, books or incidental expenses. Certain exceptions are made to the general terms of this act, but they do not include the items mentioned.

You are therefore advised that, under the above enactment, it will be necessary to have the certificate of the county auditor as to the sufficiency of funds for such purpose before entering into any contract involving the expenditures of money.

Respectfully,

C. C. CRABBE,
Attorney General.

2772.

TOWNSHIP TRUSTEES ARE REQUIRED TO SET APART EACH YEAR A HAWK AND OWL BOUNTY FUND—TOWNSHIP CLERK IS NOT AUTHORIZED TO ISSUE HIS CERTIFICATE WHEN FUND HAS BEEN EXHAUSTED.

SYLLABUS:

Section 1410, General Code, requires the trustees of a township to set apart each year a hawk and owl bounty fund out of the general township fund, and fixes the maximum amount of such fund at one hundred dollars in any year. No minimum being fixed, the trustees of a township, at their discretion, may set aside any amount less than one hundred dollars.

Where no bounty fund is set apart or such fund has become exhausted, or the same has not sufficient money with which to pay a claim for bounty, the township clerk is not authorized to issue his certificate. Any unauthorized certificate that may be issued is not a valid obligation against the township.

COLUMBUS, OHIO, Sept. 10, 1925.

HON. CARL Z. GARLAND, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR:—I acknowledge receipt of your inquiry of recent date which reads as follows:

“Is it necessary, under section 1410 of the General Code, that the township trustees establish a fund to pay a bounty of one dollar for every hawk that is killed, and in the event that they are not forced to establish this fund can they be forced in any other way to pay this bounty?”

Your inquiry presents, in substance, two questions:

(1) Under the provisions of section 1410, General Code, is it mandatory that township trustees set apart a bounty fund out of the general fund of the township?

(2) If no such fund is set apart, may a claim for bounty for hawks and owls be enforced?

Section 5828, General Code, provides for a ground hog fund. Section 5829, General Code, provides for a sparrow fund, and section 1410, General Code, provides