

main an accumulation to the county's credit." As I read the sections above set forth no particular funds are placed to the credit of any county. As above stated Section 5541-8, supra, contains limitations upon the discretion of the Director of Highways and Public Works in the expenditure of the funds in question, and requires him to apportion and use the money as therein provided. The provisions of this section are mandatory and will undoubtedly be followed by the Director. Should there be any failure to apportion the funds in question as required by law mandamus would undoubtedly lie.

Specifically answering your question it is my opinion that Section 22, Article II, of the Constitution of Ohio, applies to appropriations made by the General Assembly of funds derived under House Bill No. 206, passed by the 87th General Assembly.

4. The answer to your fourth question is found in Section 1 of the act making general appropriations, House Bill No. 502, commencing with the second sentence, which provides *inter alia*:

" * * * Appropriations for departments, * * * for the uses and purpose of which, or of any activity or function thereof, specific funds in the state treasury are provided by law, are hereby made from such specific funds, in so far as such funds are subject by law to appropriation and expenditure for the purposes herein mentioned, and to the extent that the monies to the credit of such specific funds on July 1, 1927, or which may be credited thereto prior to December 28, 1928, shall be sufficient to satisfy such appropriations. Any sums necessary to supply the balance of such appropriations are hereby appropriated out of any monies in the state treasury to the credit of the general revenue fund, * * * "

The state highway construction fund provided for in Section 5541-7, supra, is as heretofore set forth, to be used for "purpose of * * * supplying the state's share of the cost of constructing and reconstructing" state highways "and also for supplying the state's share of the cost of abolishing railway grade crossings" thereon.

With reference to the fourth question, considering the above provisions together, it is my opinion that, except where it is *specifically* directed by statute that the salary of any officer or employe of the Department of Highways and Public Works, or that any other expense, be paid from a fund other than the state highway construction fund, any legitimate expenditure incident to paying the state's share of constructing or reconstructing of state highways or abolishing railway grade crossings is a proper charge against the state highway construction fund to the extent that monies to the credit of such fund are sufficient.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1079.

INSPECTORS OF ROADS OR BRIDGES—EMPLOYED BY COUNTY SURVEYOR— COMPENSATION FROM COUNTY ROAD AND BRIDGE FUND.

SYLLABUS:

Inspectors employed by a county surveyor, for the purpose of inspecting roads or bridges constructed under authority of the county commissioners, may be com-

compensated for their services as such inspectors from funds appropriated for that purpose by the county commissioners from the road or bridge fund of the county.

COLUMBUS, OHIO, September 29, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your communication, requesting my written opinion as follows:

“You are respectfully requested to render this department your written opinion upon the following: Under the law county commissioners are required to make appropriations for the various purposes for which money is to be expended during the fiscal year. When such an appropriation has been made for the employes of the county surveyor’s office and appointments have been made in accordance with the provisions of Section 2981, G. C., may the county surveyor appoint persons residing in the vicinity of a road or bridge improvement to act as inspectors of such improvements and may such persons be paid from the road or bridge funds rather than from the general county fund from which the appropriation is made for the regular deputies and clerks in his office?”

Section 2981, General Code, relating to county officers, reads in part as follows:

Sec. 2981. “Such officers may appoint and employ necessary deputies, assistants, clerks, bookkeepers or other employes for their respective offices, fix their compensation, and discharge them, and shall file with the county auditor certificates of such action. Such compensation shall not exceed in the aggregate for each office the amount fixed by the commissioners for such office. When so fixed, the compensation of each duly appointed or employed deputy, assistant, bookkeeper, clerk and other employe shall be paid semi-monthly from the county treasury, upon the warrant of the county auditor.
* * * .”

Sections 2987 and 2793, General Code, respectively provide as follows:

Sec. 2987. “The deputies, assistants, clerks, bookkeepers, and other employes of such officers shall be paid from the appropriate county fund or funds, upon the warrant of the county auditor.”

Sec. 2793. “The county surveyor shall be responsible for the inspection of all public improvements made under authority of the board of county commissioners. He shall keep in suitable books a complete record of all estimates and summaries of bids received and contracts for the various improvements, together with the record of all estimates made for payments on the work. He shall make all surveys required by law to be made and perform all necessary services to be performed by a surveyor or civil engineer in connection with the construction, repair or opening of all county roads, turnpikes, or ditches constructed under the authority of the board of county commissioners and shall perform such other duties as such board from time to time requires.”

Formerly under Sections 2787 and 2788, General Code, as enacted in 107 O. L. 70, the county surveyor was authorized to appoint such assistants, deputies, draftsmen,

inspectors, clerks and employes as he deemed necessary for the proper performance of the duties of his office. These sections were repealed February 4, 1920. See 108 O. L., Part 2, p. 1203.

At the present time the only provision authorizing the county surveyor to employ deputies and assistants is that contained in the general provision of Section 2981, supra, relating to all county officers, which is found in the General Code in the chapter entitled "Salaries of County Officers."

At no place, so far as I know, is provision made for the appointment of persons who are specifically designated as *inspectors* in connection with or for the performance of any duties relating to public improvements constructed under authority of county commissioners.

In providing for improvements made under the supervision of the State Highway Department provision is made for the employing of *inspectors* by Section 1184-1, General Code, in this language:

"The director may employ such assistants as are necessary to prepare such plans and surveys and also such superintendents and inspectors as may be necessary in the construction of said improvement. * * "

The only provisions of the statutes that authorize the employing of *inspectors* to inspect public improvements made under authority of the county commissioners are those contained in Sections 2981 and 2793, supra, wherein the responsibility for such inspection is placed on the county surveyor. It follows as a natural corollary that unless the surveyor makes the inspection himself he must necessarily appoint and employ persons to make the inspection under authority of Section 2981, supra. Such inspectors' compensation when fixed as provided by Section 2981, supra, should be paid as provided by Section 2987, supra.

Prior to the enactment of Section 2987, General Code, in its present form, Section 2980, General Code, as enacted in 108 O. L., Part 2, p. 1216, provided that each county officer should on the first Monday of November of each year file with the county commissioners a detailed statement of the probable amount necessary for deputies, assistants and other employees of their respective offices for the succeeding calendar year; whereupon the county commissioners were directed to fix an aggregate sum to be expended for compensation for such deputies, assistants and employes during the year. The allowances so made were to be certified to the county auditor whose duty it was to transfer sufficient funds from the general county fund to a separate *salary* fund for each of said offices.

In the same act, 108 O. L., Part 2, at page 1217, Section 2987, General Code, was amended to read as follows:

"The deputies, assistants, clerks, bookkeepers and other employees of such office shall be paid from the salary fund of the office in which they are employed upon the warrant of the county auditor."

In this same act, Section 2989 was amended to read as follows:

"Each county officer hereinafter named shall receive out of the general county fund the annual salary hereinafter provided, payable monthly upon the warrant of the county auditor."

Section 2989, General Code, was again amended (109 O. L. 614) by the addition of the clause "and such additional compensation or salary as may be provided by law."

In 1925 there was passed an act providing for a balanced budget system for taxing districts and political subdivisions (111 O. L. 371). This act repealed Section 2980, General Code, and amended Section 2987, General Code, to read as it now reads. Section 2989, General Code, was not changed by the legislature that enacted the so-called budget law in 1925, by which Section 2987 was amended and Section 2980 repealed.

It will be observed that the change made in 1925 in the terms of Section 2987 was to the effect that the deputies and employes of the several county offices should be paid from the *appropriate* county fund or funds instead of the *salary fund* of the office as before.

At the time of the amendment of Section 2987 (108 O. L., Part 2, 1217) wherein it was provided that deputies and employes of county offices should be paid from the salary fund of the office, which consisted of funds transferred from the general county fund (Section 2980 as amended, 108 O. L., Part 2, 1216), there was enacted Section 2983, General Code (108 O. L., Part 2, 1217), which provided in substance that each county officer should pay into the county treasury all fees, costs, penalties, percentages, allowances and perquisites of whatever kind collected by his office, and that the money so paid into the treasury should be credited to the general county fund from which the salary fund for the several county offices was taken. This section of the statute was not changed in 1925 upon the passage of the so-called budget law. It would therefore seem reasonable to suppose that the legislature intended, when it changed the wording of Section 2987, *supra*, from the clause "from the salary fund of the office in which they are employed" to "from the appropriate county fund or funds," that the appropriate county fund or funds would be the general county fund. However, it should be considered that at the time of amending Section 2987, General Code, in 1925, there was in force Section 2989, General Code, which provided that county officers should be paid their salaries from the general fund, and this section was left unchanged. It is therefore apparent that if it had been intended to limit the payment of compensation for the deputies and other employes of the several county officers to the general county fund, as is payment of the salaries of the county officers limited, the legislature would have used the same language in Section 2987, General Code, as was used in Section 2989, General Code, and would have said "from the general county fund" instead of "from the appropriate county fund or funds." It seems apparent that it was intended that "appropriate county fund or funds" means something different than "general county fund."

It is not clear, however, as to just what was intended by the expression "appropriate county fund or funds." As the legislature has not attempted to direct what the appropriate county fund or funds would be in each case, it is apparent that their intention was that the administrative officers whose duty it is to make appropriations for the payment of the deputies and assistants in the county offices, were to be given the discretion of determining what the appropriate county fund or funds would be from which such appropriations should be made, and it is my opinion that the proper construction of Section 2987, *supra*, is that the county commissioners in making appropriations for the payment of the compensation of deputies and employes in the county offices, as provided by Section 5625-29 to which I will hereafter refer, may in their discretion make such appropriations from appropriate funds other than the general county fund. This discretion, like all discretion reposed in administrative officers, must not be abused and must be exercised in the light of what is reasonable and proper under the circumstances.

At the time of the enactment of the budget law in 1925, in which Section 2987, General Code, was enacted in its present form there was enacted Section 5649-3g which read in part as follows:

"At the beginning of each fiscal year, the county commissioners of every county, the board of education of every school district, including county school districts, the council of or other legislative authority of every municipal corporation, including charter municipalities, the trustees of every township, and the governing board or body of every other type of political subdivision or taxing district authorized by law to levy taxes or expend public funds shall make appropriations classified for the several purposes for which expenditures are to be made for and during the said fiscal year. * * * "

The provisions of Section 5649-3g, General Code, above quoted, were incorporated by the 87th General Assembly in Section 5625-29, General Code, (112 O. L. 404) which together with Section 2987, General Code, supra, are the only provisions of the statutes relating to the payment of salaries of deputies, assistants and other employes of the county offices. By virtue of Section 5625-29, General Code, the county commissioners on or about the first day of each year are directed to make appropriations for the several purposes for which expenditures may be made during the year from the funds of the county. This appropriation measure may be supplemented from time to time during the year as necessity requires. County commissioners in making this appropriation and in exercising the discretion vested in them by virtue of Section 2987, supra, to determine what is the appropriate fund from which the compensation of the deputies and employes of the county officers should be paid, could certainly not be said to have abused their discretion if they should determine that the appropriate fund from which an inspector, employed by a county surveyor to make inspections of a public improvement which was being constructed under authority of the county commissioners, should be paid from the same fund from which the cost of the improvement itself was being paid.

I am therefore of the opinion that a county surveyor may appoint inspectors for the purpose of making inspections of road or bridge improvements constructed under authority of the county commissioners and that said inspectors should be paid from appropriations made by the county commissioners for the purpose; and that county commissioners may make appropriations for the purpose of paying such inspectors from the road or bridge fund, as the case may be.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1080.

APPROVAL, BONDS OF THE CITY OF CANTON, STARK COUNTY, OHIO
—\$5,650.89.

COLUMBUS, OHIO, September 29, 1927.