

There is clear evidence, by a comparison of these two forms, that "Form 2097" was not copied from the "Record Booklet". It seems apparent that "Form 2097" was compiled from the textbook, and more nearly follows the text in some respects, at least, than does the "Record Booklet". This is shown by a comparison of No. 3 of "YEAR III" on each of the blanks with the text. In the text under this head on page 146 it is said:

"In giving the test always present the pictures in the same order, first Dutch Home, then River Scene, then Post-Office."

On "Form 2097" under this heading the identical terms, "Dutch Home", "River Scene" and "Post-Office" are used, whereas, in the "Record Booklet" the terms used under this heading are "Dutch Home", "Canoe" and "Post-Office."

It is apparent to my mind, that whoever compiled "Form 2097" compiled it directly from Professor Terman's text and did not compile it from the "Record Booklet". This seems evident from a comparison of the forms and the text. If that be true, and I believe the facts so show, it is clear from the authorities that the printing and use of "Form 2097" does not constitute an infringement of the copyright rights of Houghton Mifflin Company in the "Record Booklet", even though it could be successfully established that the "Record Booklet" is such an instrument or publication as to be the proper subject of a copyright which is very doubtful in the light of the authorities cited above.

I am therefore of the opinion, in specific answer to your question that the printing and use of "Form 2097" by the university, does not constitute an infringement of any copyright rights of Houghton Mifflin Company in its publication known as "Record Booklet."

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

1656.

COUNTY AGRICULTURAL AGENT—COUNTY COMMISSIONERS NOT  
REQUIRED TO APPROPRIATE MONEY THEREFOR WHEN.

*SYLLABUS:*

*It is not mandatory for the county commissioners to appropriate money for the payment of a county agricultural agent appointed by the trustees of the Ohio State University pursuant to the provisions of Section 9921-1a, even though in the budget estimate filed with the county budget commission pursuant to the provisions of Section 5625-20, General Code, there was included an item designated "for personal services."*

COLUMBUS, OHIO, September 29, 1933.

HON. CHAS. D. HAYDEN, *Prosecuting Attorney, Mt. Vernon, Ohio.*

DEAR SIR:—In your recent request you ask my opinion as to,

"Whether or not it is a mandatory duty of the county commissioners to appropriate money for the salary of a county agricultural agent.

In the budget prepared in 1932, for the fiscal year 1933, the county commissioners approved the general budget and under the heading of Agriculture, two items were set out. One was for personal service in the amount of \$1790.00, and the other for other expenses in the amount of \$8610.00, making a total for Agriculture in the amount of \$10,400.00. On January 12, 1933, they appropriated from the General Fund \$7815.00 to be expended from the agricultural budget of \$10,400.00 for 'other expenses' in the agricultural budget, but made no appropriation for personal service or for the county agricultural agent.

This appropriation was made from general revenues. There was no special levy made, or special fund or account set up from which payments were made other than in computing their general budget for taxation purposes, the estimated amount necessary to provide \$10,400.00 was considered in making up the fifteen mill limitation.

The commissioners have refused to appropriate any money for the salary or work of the agricultural agent and he is demanding that because the budget was approved which included his salary, that this money be expended for that purpose.

My question is if they can be compelled to pay this money."

I am also in receipt of a similar request from the Prosecuting Attorney of Athens County. I am therefore taking the liberty of combining the questions presented by both inquiries in this opinion.

The facts in the request from the Prosecuting Attorney of Athens County differ from those contained in your letter in that the item on the budget for "agricultural personal service" was \$2,000.00 while the other item for "other expenses" was \$3300.00.

Under date of March 16, 1933, the county commissioners of Athens County appropriated \$500.00 for extension work or "personal service" and the remainder of the general fund was appropriated for other purposes.

You do not state whether or not your entire general fund was appropriated for purposes other than agricultural purposes or whether there is at the present time an unappropriated amount in the general fund of your county sufficient to pay the county agricultural agent.

I am informed that neither in Knox County nor in Athens County was there any special levy for agricultural purposes, that the items above referred to were included in the budget as part of the general county fund for current expenses and that such items appear upon the budget on page 2 thereof under the heading "Comparative and estimated receipts, expenditures and balances exclusive of proceeds of bond sales under the sub-heading 'Expenditures'."

The authority for the appropriation of money for county agricultural extension agents is contained in Section 9921-1c of the General Code, which reads:

"The county commissioners of each county of the state are authorized and empowered to levy a tax, within the limitations prescribed by law, and to appropriate money from the proceeds thereof or from the general fund of the county to be paid into the state treasury to the credit of said agricultural extension fund and expended for the purposes prescribed in section 9921-1a of this act for the benefit of said county. Amounts appropriated in excess of \$3000 for each agent employed must have the unanimous consent of the board of county commissioners of the various counties. Any money paid into the state treasury under

this section which remains unexpended for two years from the time of payment shall be returned to the county from which it came."

In the case of *State ex rel. Crabbe vs. Plumb*, 116 O. S. 428, the court had before it a question as to whether Sections 9921-1 to 9921-6, General Code, required the county commissioners to make an appropriation for agricultural extension service. In the per curiam opinion in such case, at page 430, it is stated:

"Section 9921-1 and following sections of the General Code were enacted pursuant to the passage of an act of the national Congress on May 8, 1914, known as the Agricultural Extension Act (U. S. Comp. Stats., Sections 8877a-8877h), the purpose of which, as indicated by its title, was to provide for co-operative agricultural extension work between colleges, the several states receiving the benefits of an act of Congress approved July 2, 1862 (12 Stat., 503), and acts supplementary thereto, and the United States Department of Agriculture. By the provisions of Section 9921-4, General Code, the board of county commissioners is authorized to act, and empowered to make appropriations for the purpose therein stated, but where the board of county commissioners does not initiate such proceeding authority is conferred by the Legislature, in Section 9921-5, General Code, upon the electors to determine the question, and if a majority is favorable, then the county commissioners are required to make appropriations for said work in such amount as the trustees of the Ohio State University may direct, for a period of 5 years, but not exceeding \$1,500 annually."

However, Sections 9921-2 to 9921-6, General Code, were repealed in 103 O. L., 82, and Sections 9921-1a to 9921-1c, General Code were enacted in their stead.

An examination of the former sections together with the present sections, discloses that a new system of agricultural extension was adopted by such amendment. It should be noted that the language of Sections 9921-1 et seq. General Code, is permissive in terms. There is a presumption in law that the legislature is familiar with the ordinary meaning of words. As stated by Justice Brewer, in *U. S. vs. Goldenberg*, 168 U. S. 95, 102:

"The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. He is presumed to know the meaning of words and the rules of grammar. \* \*"

The ordinary meaning of the phrase "are authorized and empowered" is that of permission. The presumption is that the legislature intended to make the statute permissive.

While there are cases holding that under certain circumstances permissive language in a statute may be construed as mandatory; yet an examination of those cases will disclose that such construction may be made:

1. When the other language of the statute clearly shows that the legislature intended a command.
2. Where the public welfare requires the doing of the act authorized in permissive language the provisions will be construed as mandatory.

The language of Section 9921-1, General Code, further appears to be permissive in terms. Such section reads:

“The state treasurer shall receive and place to the credit of the Ohio state university all moneys appropriated and apportioned to Ohio by the United States under ‘an act to provide for co-operative agricultural extension work between the agricultural colleges in the several states and the United States department of agriculture,’ which act was approved May 8, 1914.

The money so appropriated and apportioned by the United States, together with any money appropriated by the state and any county or counties, to make available the aid extended by the United States in the aforesaid act (G. C. §§9916 to 9921-5), shall be set aside and designated as ‘the agricultural extension fund’ and used in accordance with the provisions of this act for the extension service of the college of agriculture of the Ohio state university. The trustees of the Ohio state university shall expend, in accordance with law, all moneys in the state treasury to the credit of the agricultural extension fund.”

My research fails to disclose any court decisions holding such statute to be mandatory. If I were to hold that it is mandatory for the county to appropriate funds for a county agricultural agent, I must likewise hold that it is mandatory for the state to appropriate moneys for such purpose, for in Section 9921-1, General Code, *supra*, the legislature refers to the agricultural extension fund as being made up of “any money appropriated by the state and *any county or counties*” in addition to federal funds. Such phrase, just quoted, would appear to indicate that the legislative intent was permissive rather than mandatory, otherwise the alternative language would have been unnecessary.

It is not within the province of the court to read words into or out of a statute, if any reasonable interpretation can be placed on its provisions by giving effect only to its words. See *Stanton vs. Realty Co.*, 117 U. S. 345, 349; *Smith vs. Bock*, 119 U. S. 101, 103; *Ohio Sav. & Trust vs. Schneider*, 25 O. App. 259.

One further question is raised by your inquiry, that is, whether it is mandatory to appropriate funds from the general fund of a subdivision in the amount set forth in the budget estimate.

An examination of the budget law discloses that the purpose of such budget estimate is to advise the budget commission of the contemplated estimated needs of the subdivision during the next tax year. See Sections 5625-20 to 5625-25, General Code. Section 5625-20, General Code, describes the budget as “an *estimate of contemplated* revenues and expenditures for the ensuing fiscal year.” Section 5625-29, General Code, further negatives the idea that the amounts set forth in the budget estimate are binding on the taxing authority as to the purpose for which the revenues may be used, in that such section provides that the taxing authority of the subdivision may delay its annual appropriation measure until it is determined the actual amount of tax funds that are to be received by the subdivision by reason of the assessment based upon the “official certificate of estimated resources.” It should be borne in mind that the budget commission has the right to cut down the amount of such estimated budget when the amount of funds therein cannot be levied within the limitation of law. Sections 5625-29 and 5625-30 of the General Code, further limit the expenditures by a subdivision unless an appropriation has been made therefor. It would therefore appear to me that one of the purposes of the legislature in requiring the budget is, not to

make it mandatory on the taxing subdivision to spend the funds which are delineated therein for any purpose, but rather to require that it be determined therefrom that the cost of operations of all of the subdivision can be provided for by levies within tax limitations.

We should bear in mind that the general fund of a subdivision is for the payment of "any expenditures for current expenses of any kind."

I am therefore of the opinion that it is not mandatory for the county commissioners to appropriate money for the payment of a county agricultural agent appointed by the trustees of the Ohio State University pursuant to the provisions of Section 9921-1a even though in the budget estimate filed with the county budget commission pursuant to the provisions of Section 5625-20, General Code, there was included an item designated: "For personal services."

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

1657.

NEWSPAPER—PROCEDURE OF COUNTY TREASURER IN PUBLISHING RATES OF TAXATION WHEN TWO NEWSPAPERS OF OPPOSITE POLITICS DO NOT EXIST WITHIN CITY OF OVER 8,000 POPULATION WITHIN COUNTY—NEWSPAPER OF GENERAL CIRCULATION DISCUSSED.

*SYLLABUS:*

1. *Where there are not two newspapers of opposite politics published in a city of over eight thousand population in a county, but there are two non-partisan newspapers published in such city and of general circulation in the county, the county treasurer should publish the notices of the rates of taxation in those two newspapers as a compliance with the terms of sections 6252 and 2648, General Code, and the said treasurer may not, at his own discretion, insert the tax rates in either of such newspapers.*

2. *Question of whether or not a certain newspaper, on the facts submitted, is a newspaper of general circulation in a county, discussed.*

COLUMBUS, OHIO, September 29, 1933.

HON. SAM L. SUMMERS, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR:—You have submitted a request for my opinion reading as follows:

"The city of Kent, Ohio, has a population of over eight thousand and there are two newspapers in the city; both newspapers profess to be politically independent papers. The question now confronting the commissioners is, whether they should pay The Bulletin Publishing Company for the rates of taxation published for the past six consecutive weeks. I am desirous of having the following questions, with reference to General Code, Section 6252, passed upon by you.

1. When there are two newspapers published in a town of over eight thousand, neither professing to be a partisan paper, can the Treas-