

1563.

SCALES OR OTHER WEIGHING DEVICES—WHEN PROSECUTING ATTORNEY MAY PURCHASE SAME FOR VIOLATION OF TRAFFIC LAWS.

Prosecuting attorneys may, under the provisions of section 3004 G. C., purchase scales or other weighing devices, whenever such purchase is found reasonably necessary to procuring of evidence against persons violating the traffic laws of the state.

COLUMBUS, OHIO, September 11, 1920.

HON. A. F. ALLYN, *Prosecuting Attorney Port Clinton, Ohio.*

DEAR SIR:—Your letter of recent date to this department reads as follows:

“It has been held by a former Attorney General, in an opinion by him, under date of June 10, 1918 (Annual Report of Attorney General for 1918, Volume I, page 786) that the county commissioners have no authority in law to purchase ‘scales’ to be used in the matter of securing evidence to convict those persons who violate the traffic regulations of the state.

Question: May the prosecuting attorney under the provisions of section 3004 of the General Code, purchase a scales or other weighing devices for said purpose?

I would be pleased to have your opinion upon this subject.”

Section 3004 G. C., so far as pertinent to your inquiry, says:

“There shall be allowed annually to the prosecuting attorney in addition to his salary and to the allowance provided by section 2914, an amount equal to one-half the official salary, to provide for expenses which may be incurred by him in the performance of his official duties and in the furtherance of justice, not otherwise provided for * * *.”

Inasmuch as section 2916 G. C. says that

“The prosecuting attorney shall have power to inquire into the commission of crimes within the county * * *,”

there can be no doubt that in the collection by him of evidence against persons violating the traffic laws of the state he is, within the meaning of section 3004 G. C., acting “in the performance of his official duties and in the furtherance of justice.”

Two further questions now remain for consideration. First, whether the purchase of scales or other weighing devices is a proper item of expense under section 3004 G. C. Secondly, whether such expense is “otherwise provided for.”

The history and evident purpose of section 3004 G. C. suggest that the legislature intended for it a rather broad scope. It is noticeable that words of general description, rather than words of particular enumeration, have been employed to indicate the “expenses” which may be provided for out of the fund. The inference is that any expense is proper under this section which relates to any usual and reasonable method employed by the prosecuting attorney to secure evidence. On this theory it has been heretofore held by the Attorney General that prosecuting attorneys may, under section 3004 G. C.:

(1) Employ and pay an attorney to assist him in procuring evidence to be used in the prosecution of a criminal offender.

1919 Opin. Atty. Gen. Vol. II, p. 1238.

(2) Hire an auto, or purchase gasoline and oil for his own auto, when in the performance of his official duties.

1919 Opin. Atty. Gen. Vol. II, p. 1231.

(3) Employ persons to procure evidence against violators of the law regulating the speed of motor vehicles, if no secret service officer has been appointed under section 2915-1 G. C.; or if such secret service officer has been appointed, to employ persons whose services are reasonably necessary in addition to the services of said secret service officer."

1916 Opin. Atty. Gen. Vol. II, p. 1453.

In my judgment the use of scales or other weighing devices for weighing vehicles using the public highways, and the loads thereon, is a usual and reasonable method of securing evidence against violators of traffic regulations imposed by state laws.

Moreover, after careful search of the statutes, I am unable to find that the expense of the purchase of scales, or other weighing devices, for the purpose just above quoted, is "otherwise provided for."

The opinion of the Attorney General referred to in your letter (1918 Op. Atty. Gen. Vol. I, p. 786) makes it clear that *county commissioners* have no authority in law to purchase scales to be used for such purpose.

You are therefore advised that prosecuting attorneys may under the provisions of section 3004 G. C., purchase scales or other weighing devices whenever such purchase is found reasonably necessary to the procuring of evidence against persons violating the traffic laws of the state. We say "reasonably necessary" in recognition of the fact that in some counties prosecuting attorneys may have access to privately-owned scales, the use of which for the purpose in question may be had either gratuitously or by the expenditure of a sum of money much less than that involved in the purchase of scales.

The question here presented is by no means free from doubt and the conclusion has been reached after much reflection and consideration. We are without the light of adjudicated cases on the subject to guide us, but taking into consideration the fact that the duty to enforce these laws has been cast upon the prosecuting attorneys, no rule of construction should be adopted that will impede or thwart their efforts in that behalf.

The department, therefore, in the absence of a judicial determination, has adopted the construction which will best enable the prosecutors the most efficiently to perform their required duties.

Respectfully,

JOHN G. PRICE,

Attorney-General.