

The only question remaining would be as to whether or not it is physically possible for a deputy sealer of weights and measures to perform the duties of member of a county board of elections simultaneously. In my opinion No. 338, rendered March 23, 1933, I held that it is a question of fact to be determined whether it is physically possible for one person to perform the duties of deputy sealer of weights and measures and agent of a humane society. Therefore, it is a question of fact to be determined in the present instance whether it is physically possible for a deputy sealer of weights and measures to perform the duties of member of a county board of elections at the same time. Hence, in specific answer to your second question, I am of the opinion that a deputy sealer of weights and measures may hold the office of member of a county board of elections at the same time, providing it is physically possible for one person to transact the duties of said office and position.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

861.

COUNTY COMMISSIONERS—UNAUTHORIZED TO RESCIND RESOLUTION AUTHORIZING SALARY OF COUNTY HUMANE AGENT—RESOLUTION NULLITY WHEN APPROPRIATION REQUIRED BY STATUTE.

SYLLABUS:

1. *When the board of county commissioners, in compliance with the requirements of Section 10072, General Code, has made an appropriation of an amount of money sufficient to pay to the county humane agent as salary the minimum amount permitted by the provisions of such section, the county commissioners thereafter, have no authority to rescind the resolution making such appropriation.*

2. *The adoption of a resolution by a board of county commissioners purporting to rescind, annul and vacate an appropriation of an item for which they were required by statute to appropriate the specific sum appropriated is a nullity, and such resolution, so adopted, is of no effect.*

COLUMBUS, OHIO, May 23, 1933.

HON. JOHN F. PORTER, *Prosecuting Attorney, Ironton, Ohio.*

DEAR SIR:—Your recent request for opinion reads:

“The Board of Commissioners of L County, Ohio, in its annual appropriations for the year 1933, appropriated \$300.00 for the salary of Humane Officer.

Subsequently, on the 24th day of February, 1933, the Board of Commissioners took the following action, as shown by the journal record of its proceedings.

‘A motion was made by Mr. M that the \$300.00 appropriation made for the Humane Society be cancelled, and that the Clerk notify the Prosecuting Attorney to file an injunction, or whatever proceedings

are necessary, against the County Auditor prohibiting him from paying S or the Humane Society for the purpose of paying S any amount as Humane Officer. Seconded by Mr. C.

Upon roll call the vote was as follows:

Mr. C. Aye.

Mr. M. Aye.'

I respectfully request your opinion:

First: As to the legality of the action of the Board of Commissioners taken in this matter on February 24, 1933?

Second: In the event you hold that the Board's action was illegal, what is your opinion as to the effect of such action? Was it void or merely voidable?

Third: Could the County Auditor legally pay such salary to the Humane Officer without rescission, by the Board of County Commissioners, of its action taken on February 24, 1933?

The above questions presuppose that such Humane Officer has been duly appointed by a duly constituted Humane Society for territory outside of a city or village, and that such appointment has been found a necessity and approved by the probate judge and that there are sufficient funds for the payment of such salary."

Section 10072, General Code, referring to the appointment and payment of humane agents, reads:

"Upon the approval of the appointment of such an agent by the mayor of the city or village, the council thereof shall pay monthly to such agent or agents from the general revenue fund of the city or village, such salary as the council deems just and reasonable. Upon the approval of the appointment of such an agent by the probate judge of the county, the county commissioners shall pay monthly to such agent or agents, from the general revenue fund of the county, such salary as they deem just and reasonable. The commissioners, and the council of such city or village may agree upon the amount each is to pay such agent or agents monthly. The amount of salary to be paid monthly by the council of the village to such agent shall not be less than five dollars, by the council of the city not less than twenty dollars, and by the commissioners of the county not less than twenty-five dollars. But not more than one agent in each county shall receive remuneration from the county commissioners under this section."

In the case of *State ex rel. Coshocton Humane Society vs. Ashman*, Probate Judge, 90 O.S. 200, the court held that the power and duty of determining not only the fitness of an applicant for the position of county humane agent but the necessity for such officer, was upon the probate judge of the county.

The language of Section 10072, General Code, is mandatory in its terms. Since the probate court has, upon confirming the appointment of the humane agent, in effect determined that public interest required his appointment, I know of no rule of construction of statutes which would permit a court to substitute the word "may" for "shall" in such section. *Stanton vs. Realty Co.* 117 O. S. 345; *Lessee of Swazey's Heirs vs. Blackman*, 8 Ohio, 5, 18; *State ex rel vs. Board of Education*, 95 O.S. 367.

The language of the statute, Section 10072, General Code, is that the commissioners shall pay "not less than twenty-five dollars" toward the salary of the humane agent. It would therefore, appear that there is a mandatory duty on the board of county commissioners to appropriate not less than such sum of money for such salary.

While you do not specifically so state in your inquiry, I assume that the item referred to in the resolution as "the \$300.00 appropriation" is for the payment of the minimum of \$25.00 per month to the humane agent.

I do not hold that the board of county commissioners cannot rescind a resolution enacted by them, when at the time of the original adoption of the resolution they might legally have adopted such resolution or refrained from the adoption of such resolution as they deemed expedient, providing property rights have not become vested in reliance thereon; yet since there is a mandatory duty upon the county commissioners to appropriate and cause to be paid to a county humane agent the sum of not less than \$25.00 per month; and, in performance of such legal duty appropriations were made, I am unable to come to the conclusion that the board of county commissioners can now rescind an act which they had no legal right to refrain from performing in the first instance.

Specifically answering your inquiries it is my opinion that:

1. When the board of county commissioners in compliance with the requirements of Section 10072, General Code, has made an appropriation of an amount of money sufficient to pay to the county humane agent as salary the minimum amount permitted by the provisions of such section, the county commissioners thereafter, have no authority to rescind the resolution making such appropriation.

2. The adoption of a resolution by a board of county commissioners purporting to rescind, annul and vacate an appropriation of an item for which they were required by statute to appropriate the specific sum appropriated is a nullity, and such resolution, so adopted, is of no effect.

Respectfully,

JOHN W. BRICKER,
Attorney General.

862.

COUNTY RELIEF BOARD—COUNTY COMMISSIONERS UNAUTHORIZED TO PAY EXPENSES THEREOF FROM PUBLIC FUNDS—UNEMPLOYMENT RELIEF.

SYLLABUS:

When there is formed in a county a board known as a county relief board which has as its purpose the investigation and preparation of a list of unemployed persons within a county and the furnishing of such list to contractors on public, state or county projects, the board of county commissioners of such county has no authority to pay the expenses of such board and no authority to compensate the members and employes of such board from public funds, for their time and efforts in such service.

COLUMBUS, OHIO, May 23, 1933.

HON. NORTON C. ROSENSTRETER, *Prosecuting Attorney, Port Clinton, Ohio.*

DEAR SIR:—Your recent request for opinion reads: