

"Except as the power may be implied, as being necessary to carry into effect some expressly granted power, a board of education is not authorized to rent or lease property held by it for the public school purposes of its district."

Respectfully,

GILBERT BETTMAN,
Attorney General.

2887.

RESEARCH BUREAU—COUNTY COMMISSIONERS—NO AUTHORITY TO CONTRACT FOR SURVEY OF COUNTY OFFICES LOOKING TO ESTABLISHMENT OF NEW SYSTEMS AND REPORTING LAYOUT.

SYLLABUS:

County commissioners, under existing laws relating to county government, are not authorized to contract for the employment of a bureau of governmental research to make a survey and study of county offices and institutions, which survey consists of recommending new systems of accounting, advising as to a new system of budget procedure, reporting on personnel, office lay-out, contract procedure, budgeting, etc. Action of State Bureau of Inspection and Supervision of Public Offices upheld.

COLUMBUS, OHIO, January 30, 1931.

HON. ROBERT N. GORMAN, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—Your predecessor recently submitted a request for an opinion, which request is as follows:

"The enclosed copy of Resolution and Agreement were transmitted to this office by the Board of County Commissioners with the request that we advise it as to its authority to expend county funds for the proposed survey.

We transmitted a copy of this Resolution to the Bureau of Inspection and Supervision of Public Offices for its advice in the matter and to date have received no reply. We anticipate that the Bureau has transmitted the same to your office for your opinion, and inasmuch as this is the last day of my term as Prosecuting Attorney and as the matter seems particularly within the province of the said State Bureau, I respectfully request that you advise this office of your opinion of the subject matter."

Since receipt of your predecessor's letter, we are advised that the Bureau of Inspection and Supervision of Public Offices has ruled (copy sent herewith) that "the county commissioners are without authority to make the contemplated contract." You have requested that I review this ruling. I concur therewith for the following reasons:

According to the resolution proposed to be passed by your board of county commissioners, the contract to be entered into with a bureau of governmental research is to provide that in consideration of the payment to such bureau of governmental research of not to exceed eight thousand dollars, this bureau will make a complete survey and study to include the following:

“1. Reappraisal

Bureau to advise County Auditor as to general procedure in reappraisal and assist in setting up office records.

2. Accounting

A survey of the present accounting system in the County Auditor's office and County Treasurer's office; the installation of a new accounting system; and its relation to the various departmental accounting records.

3. Tax Billing

The installation in the County Auditor's and County Treasurer's offices of a new system of billing and collecting taxes. This system has been designed and can be installed immediately.

4. Budget Procedure

The revision of the present system of estimating and controlling the expenditures and receipts of county funds.

5. Personnel

A survey of county personnel for the purpose of formulating recommendations and legislation.

6. County Commissioners Office

A survey of this office to include contract procedure, budgeting, personnel, housing, purchasing and office layout.

7. County Hospitals

A survey of the County Tuberculosis Hospital and the Chronic Hospital and the County Home. This study to tie in with the present survey of the City General Hospital.

8. Regional Police Administration

A survey of regional police administration has been completed. This study should be followed up by further studies of the offices of County Sheriff, County Prosecutor, and County Coroner.

9. Regional Government

Completion of present general survey with follow-up through special studies.

Such survey and study to include the making of a report to the County Commissioners or the several officers of the County Government with appropriate recommendations.”

In passing upon this question of the authority of a board of county commissioners to contract for such services as are here contemplated, it must be borne in mind that public officers have such powers only as are expressly conferred by law and such as are necessary to effectuate those powers expressly conferred. The provisions relative to the powers of boards of county commissioners in regard to employes are contained in Sections 2409, et seq., General Code. Sections 2409 and 2410 provide as follows:

Sec. 2409.

“If such board finds it necessary for the clerk to devote his entire time to the discharge of the duties of such position, it may appoint a clerk in place of the county auditor and such necessary assistants to such clerk as the board deems necessary. Such clerk shall perform the duties required by law and by the board.”

Sec. 2410.

"The board may employ a superintendent, and such watchman, janitors and other employes as it deems necessary for the care and custody of the court house, jail, and other county buildings, and of bridges, and other property under its jurisdiction and control."

Section 2411 relates to the employment of an engineer; Section 2412, to the employment of legal counsel; Sections 2412-1 and 2412-2, motor vehicles; and 2413, the compensation of persons appointed or employed under these sections.

It appears, therefore, from a review of the pertinent statutory provisions that the legislature has made no provisions in the foregoing sections for contracting for the employment of an advisory bureau of experts to formulate systems designed to increase the efficiency of the various county offices in the performance of their governmental functions. I do not find any other provisions of the General Code which, in my view, may be said to authorize such an expenditure of public funds.

There is a further pertinent consideration. A portion of the services called for in the proposed contract relates to the installation of new accounting systems. As to this, the provisions of Sections 277, et seq., General Code, should be noted. Section 277 provides as follows:

"The auditor of state, as chief inspector and supervisor, shall prescribe and require the installation of a system of accounting and reporting for the public offices, named in section two hundred seventy-four. Such system shall be uniform in its application to offices of the same grade and accounts of the same class, and shall prescribe the form of receipt, vouchers and documents, required to separate and verify each transaction, and forms of reports and statements required for the administration of such offices or for the information of the public."

The legislature has evidently conferred authority to establish accounting systems in the various counties of the state upon the Auditor of State—probably with the view to make county accounting systems uniform throughout the state in order to facilitate the work of the State Bureau of Accounting—a branch of the work of the State Auditor. The duty having been expressly conferred upon the State Auditor,—no authority could be implied vesting its performance in the county commissioners.

Another portion of the service contemplated apparently has to do with personnel and administration of the various county offices. The responsibility regarding these matters rests with the officers themselves elected by the people and is not, under present laws, a matter within the jurisdiction of the commissioners.

Further, any action of the county commissioners in causing the office of the county treasurer and the county auditor to be surveyed, raises the question of whether or not these two offices are under the jurisdiction of or subordinate to the board of county commissioners. As a matter of governmental structure, the commissioners, the auditor and treasurer are all coordinate county officials. All are elected by the people and one branch of county government, under present laws, is not subordinate to the other. As stated by my predecessor in an opinion appearing in Opinions of the Attorney General for 1928, Vol. III, p. 1806:

"There is no supervising authority in county government. Each officer, within the realm of the duties of his office, is independent, yet each is dependent

to some extent on the county commissioners, especially with respect to the furnishing of offices and supplies, and the providing of moneys for the payment of deputies and clerks, and other necessary expenses incident to the maintenance of the office."

The county commissioners are not analogous to a City Council or the state General Assembly,—they do not have general legislative powers—and their administrative functions are, as previously set forth, such only as are conferred by statute together with those necessarily implied as incident thereto.

Though this survey by experts may be for a most laudable purpose, the question remains, whether or not the commissioners have the power to effectuate such purpose. It is a legal purpose, not a laudable purpose, that justifies an expenditure of the taxpayers' money.

In view of the foregoing and in specific answer to your question, it is my opinion that county commissioners, under existing law relating to county government, are not authorized to contract for the employment of a bureau of governmental research to make a survey and study of county offices and institutions, which survey consists of recommending new systems of accounting, advising as to a new system of budget procedure, reporting on personnel, office lay-out, contract procedure, budgeting, etc., and that the ruling of the State Bureau of Inspection and Supervision of Public Offices, denying the authority of the commissioners to enter into the contract in question, is correct.

Respectfully,

GILBERT BETTMAN,

Attorney General.

2888.

BOARD OF EDUCATION—COMPENSATION—ATTENDANCE AT MEETING
—REMUNERATION MEMBERS SHOULD RECEIVE REGARDLESS OF
ACTUAL EXPENSES INCURRED.

SYLLABUS:

Members of a county board of education should be paid \$3.00 per day, and mileage at the rate of 10c per mile one way, for attendance upon any meeting of the board, regardless of the actual expenses incurred by the member.

COLUMBUS, OHIO, January 30, 1931.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"Section 4734, General Code, provides that each member of a county board of education shall be paid \$3.00 per day and mileage at the rate of 10c per mile one way to cover his actual and necessary expenses during his attendance upon any meeting of the board. It further provides that such