

officers, to afford support or relief to any person, to show that such person, during the period necessary to obtain a legal settlement therein, has been supported in whole or in part by others, with the intention to thereby make such person a charge upon such township.

It is, therefore, my opinion, upon the facts stated in your request, that there is no type of action that the township trustees can successfully maintain to compel the superintendent to admit the family in question and that the township trustees are bound in law to continue the granting of aid to the family in question.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

136.

COUNTY SHERIFF—AUTHORITY FOR DEPUTY, ENFORCE
TRAFFIC RULES AND REGULATIONS—NO AUTHORITY
UNDER SEC. 7251-1—DETAIL OF REGULARLY APPOINT-
ED DEPUTY WHEN, UNDER SEC. 7251-1 .

SYLLABUS:

A sheriff is granted no authority to appoint a deputy sheriff to enforce traffic rules and regulations under Section 7251-1, General Code. The sheriff is authorized under such section to detail a deputy sheriff appointed in compliance with Section 2830, General Code, to perform such duty if and when the county commissioners have created a road fund out of which such deputy sheriff can be equipped and compensated as provided by Section 7251-1, General Code.

COLUMBUS, OHIO, February 17, 1937.

HON. ROBERT C. CARPENTER, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR: I am in receipt of your communication of recent date as follows:

“Under the provisions of Ohio General Code, Section 2830, the Sheriff of Seneca County has appointed two deputies, whose salaries total the amount appropriated by the County Commissioners for this purpose. The Sheriff is now desirous of appointing a special deputy under the provisions of Ohio General Code, Section 7251-1. It’s admitted that this County has more

than forty miles of improved inter-county roads. Seneca County has no road fund or no separate road or bridge fund. The question is, if the Sheriff of Seneca County, Ohio, appoints a deputy under this Section, it is mandatory for the County Commissioners to make an appropriation to compensate such deputy, and if so, from what fund is this appropriation to be made?"

The sheriff of a county is granted general power to appoint deputies under virtue of Section 2830, General Code, which reads as follows:

"The sheriff may appoint in writing one or more deputies. If such appointment is approved by a judge of the court of common pleas of the sub-division in which the county of the sheriff is situated, such approval at the time it is made, shall be indorsed on such writing by the judge. Thereupon such writing and indorsement shall be filed by the sheriff with the clerk of his county, who shall duly enter it upon the journal of such court. The clerk's fees therefor shall be paid by the sheriff. Each deputy so appointed shall be a qualified elector of such county. No justice of the peace or mayor shall be appointed such deputy."

In addition to this general grant of power to the sheriff to appoint deputies, he is invested with a special power under a particular statute to detail a deputy sheriff to enforce the traffic rules and regulations within his county. Section 7251-1, General Code, provides as follows:

"In those counties having forty miles or more of improved inter-county or main market roads the sheriff of each county shall and in all other counties may detail one or more deputies for the work of enforcing the provisions of this act (G.C. Secs. 7246 to 7251-1); and the county commissioners of each county shall appropriate such amount of money annually, from the road fund of such county as shall be necessary to equip and to compensate such deputy or deputies for services rendered hereunder. The road superintendents and assistant road superintendents of the state highway department and patrolmen of the county highways may be deputized by the sheriffs of the counties in which they are employed, as deputy sheriffs, but shall receive no extra compensation."

In your communication you state that your county (Seneca) has more than forty miles of improved inter-county roads. That being so, it is a legal consequence that the sheriff shall detail a deputy to enforce

the traffic rules and regulations as therein provided, and your county commissioners should appropriate from the road fund of the county a sufficient amount of money to equip and compensate such deputy. You state that your sheriff has appointed two deputies whose salaries consume the total amount appropriated for such purpose by the county commissioners, and that he is desirous to appoint a special deputy under Section 7251-1, General Code. This section carries no power to appoint. It does command the sheriff to detail one of his deputies for the duty prescribed in said section. The question of appointment of deputies by the sheriff is a small matter inasmuch as the sheriff can appoint as many deputies as the Judge of the Court of Common Pleas of his county sees fit to approve.

The duty to make the detail as provided by Section 7251-1, General Code, is in mandatory language, but you state that your county has no road fund from which to equip and pay such deputy. I find no other fund from which such deputy sheriff could be paid for his services as traffic officer. However mandatory the language of a statute may be, it cannot require a vain thing. A magnanimous citizen may serve the state without compensation. That is a matter of his own volition, but the courts will not require such citizen to perform a public service without reasonable compensation without his consent.

The sheriff cannot be required to detail one of his deputies for traffic duty without pay. Inasmuch as such deputy must be paid from the county road fund and there is no such fund and no other fund out of which he can be legally paid, the duty of the sheriff to make the detail provided in Section 7251-1, General Code, does not become mandatory unless and until the county commissioners create a county road fund out of which such deputy can be compensated as provided by statute.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

137.

CLEVELAND METROPOLITAN BOARD OF PARK COMMISSIONERS LIABILITY, MISAPPLICATION OF FUNDS OF BOARD—ILLEGAL DELIVERY OF FUNDS TO COUNTY AUDITOR.

SYLLABUS:

The Members of the Cleveland Metropolitan Board of Park Commissioners are civilly liable for the loss of funds resulting from the mis-