

it is my opinion that your department is required to pay the Department of Industrial Relations the fees for certificates of inspection of steam boilers provided by Section 1058-25, General Code.

The reasoning and conclusion reached in the consideration of your first question apply with like force to your second question relating to the inspection of elevators under the provisions of Section 1038-1, et seq., General Code.

Respectfully,

JOHN W. BRICKER,

Attorney General.

4215.

COUNTY COMMISSIONERS—AUTHORIZED TO PURCHASE SURGICAL INSTRUMENTS FOR CORONER WHEN.

SYLLABUS:

1. *County commissioners by virtue of section 2419 General Code may, if they deem it necessary, purchase with county funds a set of surgical instruments for the use of the coroner in performing autopsies and post mortems.*

2. *The authority of the county commissioners to purchase surgical instruments is not limited by the fact that the coroner, because of the population of his county, receives fees rather than a salary and maintains his office as such coroner and practicing physician in his own home.*

COLUMBUS, OHIO, May 2, 1935.

HON. JESSE H. LEIGHNINGER, *Prosecuting Attorney, Youngstown, Ohio.*

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

“A request has been received by the County Commissioners to furnish the County Coroner with a set of surgical instruments for his use in autopsies and post mortems.

I should like to have your advice as to whether or not you find in section 2419 General Code or elsewhere, authority for the purchase by the Commissioners of such equipment for the Coroner, and if so, is such authority limited by virtue of the fact that our county is less than 400,000 in population, the Coroner therefore receiving fees rather than a salary and maintains his office as such Coroner and practicing physician in his own private home.”

A coroner may investigate a death which occurred under questionable circumstances by means of an autopsy or post mortem provided he is authorized to do so by the prosecuting attorney of the county. Section 2856 Ohio General Code.

The Board of County Commissioners, being a creation of the legislature, has only those powers which are conferred upon it through legislative enactment. Especially in financial transactions the authority to impose an obligation upon the county must be clearly granted. *State, ex rel. vs. Menning*, 95, O. S. 97, 99.

Section 2419, General Code, to which you refer, was amended in 1919 to read as follows:

"A court house, jail, public comfort station, offices for county officers and an infirmary shall be provided by the commissioners when in their judgment they or any of them are needed. Such buildings and offices shall be of such style, dimensions and expense as the commissioners determine. *They shall also provide all the equipment, stationery and postage, as the county commissioners may deem necessary for the proper and convenient conduct of such offices, and such other facilities as will result in expeditious and economical administration of the said county offices.* They shall provide all rooms, fire and burglar-proof vaults and safes and other means of security in the office of the county treasurer, necessary for the protection of public moneys and property therein." (Italics the writer's)

The underscored language was added by the amendment and any authority which the commissioners might have to purchase surgical instruments for the coroner's use in autopsies and post mortem necessarily must be found in this language as I find no other statutory provision specifically granting such power.

Questions pertaining to the interpretation of section 2419 have heretofore been presented to my predecessors in office and in Vol. 1 of the Opinions of the Attorney General for 1927 at page 151 it was held that the county commissioners could legally furnish handcuffs for the use of the county sheriff, while in Vol. 1 of the Opinions of the Attorney General for 1931 at page 149 it was the opinion of the then Attorney General that tear gas could be bought with county funds for the protection of moneys held by the county treasurer.

In the case of *Gorman vs. Heuck*, 41 O. App. 453 Judge Ross, in refusing to allow funds to be expended by the county commissioners for outside advice by experts to the auditor and treasurer, said:

"The intent of the legislature was to authorize the county commissioners to provide such physical aids and help as might assist the officers in efficiently conducting their offices; that they should be furnished with suitable space, proper equipment and necessary supplies."

It therefore seems apparent that surgical instruments are "physical aids" which the commissioners might determine to be such "necessary equipment and facilities as will result in the expeditious and economical administration" of the office of the county coroner.

Your second inquiry covers the authority granted by section 2419 when applied to a coroner in a county whose population is less than 400,000, who receives fees instead of a salary and who has his office as coroner and practicing physician in his own home.

Section 2866 merely lists the fees which the coroner is to be paid for his various services and section 2866-1, which limits the total amount which may be paid as fees to a coroner in a county of less than 400,000, reads as follows:

"In counties having a population, according to the last federal census, of less than four hundred thousand the total compensation paid to the coroner, as fees, under all sections of the General Code, in no case shall exceed five thousand dollars per annum or be less than one hundred and fifty dollars per annum. If the fees in any one year are less than the minimum compensation allowed by law then such coroner shall be allowed the difference up to one hundred and fifty dollars to be paid by the county commissioners out of the emergency or contingent fund."

None of the sections above referred to contains any language which would limit the authority granted in section 2419 to a county of more than 400,000 where an office is usually provided for the coroner by the county. Furthermore, when section 2419 was amended in 1919, as stated above, the only method of compensating a coroner was through fees. Section 2856-4, which provides for a regular salary for a coroner in a county of more than 400,000, was not enacted until 1927 (112 O. L. 204). Consequently there can be no question as to the applicability of section 2419 in counties where coroners are paid through the fee system.

The fact that the office of the coroner is maintained in his own home in which he also conducts his private practice does not change the situation, as the power to equip an office is not affected by its location. The instruments, however, would at all times be the property of the coroner's office and would have to be surrendered by the incumbent to his successor.

In view of the foregoing and in specific answer to your questions, it is my opinion that:

1. County commissioners by virtue of section 2419 General Code may, if they deem it necessary, purchase with county funds a set of surgical instruments for the use of the coroner in performing autopsies and post mortems.
2. The authority of the county commissioners to purchase surgical instruments is not limited by the fact that the coroner, because of the population of his county, receives fees rather than a salary and maintains his office as such coroner and practicing physician in his own home.

Respectfully,

JOHN W. BRICKER,

Attorney General.

4216.

**LIBRARY—LIBRARY OF ASSOCIATION INCORPORATED NOT FOR PROFIT
IS NOT PUBLIC LIBRARY AND MAY NOT PARTICIPATE IN PROCEEDS
OF CLASSIFIED PROPERTY TAXES.**

SYLLABUS:

1. *A library owned, maintained and operated by a library association organized under the General Corporation Act of Ohio, as a corporation not for profit, is not a public library.*
2. *A board of trustees of a library so organized and operated cannot avail itself of the provisions of sections 5639 and 5625-20 of the General Code, with reference to participation in the proceeds of classified property taxes, collected in the county where such library is located.*

COLUMBUS, OHIO, May 2, 1935.

HON. FERDINAND E. WARREN, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows: