

priations available for such purpose, to fix the salary of such protectors. In other words, the legislature has vested in the Director of Agriculture the sole authority with regard to game protectors. I know of no section of the General Code which would prevent the transfer from one county to another of such appointees by the Director of Agriculture.

Answering your question specifically it is my opinion that the Director of Agriculture has authority to transfer "game protectors" to such counties or places within the State of Ohio as he may deem advisable in the performance of his duties as Director of Agriculture.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1313.

PROSECUTING ATTORNEY—NO AUTHORITY TO SETTLE ROAD APPEAL CASES UNLESS SAME IS GIVEN BY COUNTY COMMISSIONERS.

SYLLABUS:

The prosecuting attorney of a county has no power or authority to settle a road appeal case without authority given to him by the board of county commissioners of said county so to do, if such settlement involves the rights of the county or of said board in such case, and does not merely have reference to some matter of practice or procedure in presenting the rights of the parties in the case to the court or jury for determination.

COLUMBUS, OHIO, November 29, 1927.

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

GENTLEMEN:—This is to acknowledge receipt of your letter of November 14, 1927, enclosing a communication from the board of county commissioners of Belmont County and requesting my opinion on a question therein stated, as follows:

"Does the prosecuting attorney of a county have power to settle road appeal cases in probate court without authority given by the county commissioners, the county commissioners not being aware that a compromise would be made and having not made any journal entry to that effect?"

No facts are stated in connection with the question above noted and the most that I can do is to note a few of the general principles of law that may be applicable to the particular situation that the county commissioners may have had in mind in submitting this question.

Provision is made for appeals from orders and findings of the board of county commissioners in public road proceedings, as follows:

Sec. 6891: "Any person, firm or corporation interested therein, may appeal from the final order or judgment of the county commissioners made in the proceeding and entered upon their journal determining either of the following matters:

1. The compensation for land appropriated.
2. The damages claimed to property affected by the improvement.
3. The order establishing the proposed improvement.
4. The order dismissing or refusing to grant the prayer of the petition

for the proposed improvement."

Sec. 6916: "Any person, firm or corporation aggrieved by the finding of the commissioners upon any application for compensation or damages, may appeal to the probate court by giving the notice provided for in the chapter of this act (G. C. Sections 1178, et seq., 3298-1, et seq., 3370, et seq., 6860, et seq., 6906, et seq., 7181, et seq., 7464, et seq., 7496, et seq., and 13421, et seq.) relating to appeals in road cases, and by filing the bond therein provided, and such proceedings shall be thereafter had upon such appeal, as are provided for in said chapter."

Section 6891-1, General Code, provides that such appeal shall be made by giving written notice of such intention to the board of county commissioners and by filing a bond with the county auditor in an amount to be fixed by the board of county commissioners, said bond to be conditioned to pay all costs made on the appeal, if the appellant fails to sustain such appeal or the same is dismissed.

Section 6894, General Code, provides that within ten days of the filing of such appeal bond, the county commissioners shall transmit to the probate court the original papers in the proceedings, and a certified transcript of the record of said commissioners of all proceedings in connection therewith. By said section it is further provided that upon receipt of said original papers and transcripts the probate judge shall docket the cause and the appellants shall be designated as plaintiffs, and the county commissioners and other parties in interest shall be designated as defendants.

The prosecuting attorney by virtue of his office as such has no authority in the premises, and I assume that the question submitted has reference to the authority of said officer as attorney for the board of county commissioners in some pending road appeal case.

Section 2917, General Code, so far as it pertains to the instant question, provides:

"The prosecuting attorney shall be the legal adviser of the county commissioners and all other county officers and county boards and any of them may require of him written opinions or instructions in matters connected with their official duties. He shall prosecute and defend all suits and actions which any such officer or board may direct or to which it is a party, and no county officer may employ other counsel or attorney at the expense of the county except as provided in Section 2412. * * *"

The prosecuting attorney of a county, as attorney for the board of county commissioners, stands in the same relation to such board as does any other attorney to his client. As to this, it is quite clear that an attorney merely by reason of his relation or connection, as such, is not authorized to compromise the rights of his client in a pending suit or proceeding, nor in any other matter entrusted to his care and attention. (6 Corpus Juris, p. 659.)

"The general rule is now well settled that an attorney has no power, by mere virtue of his retainer and without express authority, to bind his client by a compromise of a pending suit or other matter intrusted to his care." (3 Am. & Eng. Ency. of Law, 2nd Ed., p. 358.)

To the same effect are:

- Holden vs. Lippert, 12 O. C. C. 767.
- Holcher vs. Parker, 7 Granch 436.
- United States vs. Beebe, 180 U. S., 343.
- Kilber vs. Gallaher, 112 Iowa, 583.
- Loughridge vs. Burkart, 147 Ky., 457.
- Fetz vs. Leyendecker, 157 Mich., 355.

Bush vs. O'Brien, 164 N. Y., 205.
 Carter vs. Cooper, 111 Va., 602.
 Fosha vs. O'Donnell, 120 Wis., 336.

In *Pomeroy vs. Prescott*, 106 Me. 401, the court says:

"An attorney who is clothed with no authority other than that arising from his employment in that capacity, has no power to compromise and settle or release or discharge his client's claim. He may do all things incidental to the prosecution of the suit and which affects the remedy only and not the cause of action. He cannot bind his client by any act which amounts to a surrender in whole or part of any substantial right."

In *Garnett vs. Hanshue*, 53 O. S. 482, the second branch of the syllabus reads in part as follows:

"An attorney of record has power to do on behalf of his client all acts, in or out of court, necessary or incidental to the prosecution, defense or management of the action, and which affect only the remedy and not the right.
 * * * *"

In line with the principles of law above noted, but more immediately touching the relation of a prosecuting attorney of a county, as attorney for the board of county commissioners of such county, in an action wherein such board is a party, I note the following from the opinion of the court in the case of *State of Ohio, ex rel. vs. The County Commissioners of Coshocton County*, 16 O. C. C. (N. S.) 144, 147:

"It is true that the prosecuting attorney for the county is made by law the legal adviser of the board of county commissioners, and it is made his duty to prosecute and defend suits for the county, and certain suits may be brought by him on his own initiative, but generally his action, so far as prosecuting and defending suits is concerned, is directed by the commissioners, it is certainly no part of his duty to direct the commissioners as to the policy to be pursued by them in any business transaction. It is his duty to advise them of what their legal rights and duties are as a board of commissioners; having done this, it is for the commissioners to determine the policy they will pursue in the matter of bringing or defending actions or settling actions already brought."

On the considerations above noted, I am of the opinion that the prosecuting attorney of a county has no power or authority to settle a road appeal case without authority given him by the board of county commissioners so to do, if such settlement involves the rights of the county or of said board in such case, and does not merely have reference to some matter of practice or procedure in presenting the rights of the parties in the case to the courts or jury for determination.

As to the principles by which courts will be governed in cases such as the instant case, see the following:

6 Corpus Juris 661.
 United States vs. Beebe, 180 U. S., 343.
 Bush vs. O'Brien, 164 N. Y., 205.
 Julier vs. Julier, 62 O. S., 90, 91.

Respectfully,
 EDWARD C. TURNER,
 Attorney General.