

See Opinions of the Attorney General for 1920, page 394.

I am therefore of the opinion, in specific answer to your question, that there is no authority for the distribution of any part of the proceeds of the 2.65 mills tax levy authorized by Section 7575, General Code, to school districts outside city and exempted village districts on the basis of teachers and educational employes as provided by Section 7600, General Code, unless those teachers and educational employes receive a salary of \$800.00 or more per year, and that in making such distribution those teachers and educational employes only who receive a salary of more than \$800.00 per year, may be considered.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3729.

SALARY—SECRET SERVICE OFFICER—COUNTY AUDITOR UNAUTHORIZED TO ISSUE WARRANT FOR SUCH WHERE NO APPROPRIATION BY COUNTY COMMISSIONERS—MAY BE PAID FROM PROSECUTING ATTORNEY'S FUND.

SYLLABUS:

The salary of a secret service officer appointed under section 2915-1, General Code, cannot be paid out of the general fund of the county on the warrant of the county auditor when there has been no appropriation made for his salary by the county commissioners. However, if there is any balance in the prosecuting attorney's 3004, General Code fund, said secret service officer's salary may be paid therefrom, without a specific appropriation from the county commissioners.

COLUMBUS, OHIO, November 3, 1931.

HON. J. R. B. KESSLER, *Prosecuting Attorney, West Union, Ohio.*

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

"I appointed a secret service man for my office under Section 2915-1 and he has rendered service for one month and is entitled to \$125.00 as fixed by the Common Pleas Judge. The county commissioners have not made any appropriation for its payment and refuse to do so. Can this be paid out of the general fund of the county without an appropriation by the Commissioners, on a warrant of the County Auditor? He does not care to be at the expense of a suit against the commissioners for its recovery. It might be that the commissioners would take action if so advised by you. Please advise me in relation to the matter."

Article X, Section 5, Ohio Constitution, provides as follows:

"No money shall be drawn from any county or township treasury, except by authority of law."

Sections 5625-1, 5625-29 and 5625-33, General Code, sections of the budget law, read, in so far as pertinent, as follows:

"Sec. 5625-1. The following definitions shall be applied to the terms used in this act:

(a) 'Subdivision' shall mean any county school district, except the county school district municipal corporation or township in the state.

* * *

(c) 'Taxing authority' * * * shall mean in the case of any county, the county commissioners; * * *

"Sec. 5625-29. On or about the first day of each year, the taxing authority of each subdivision or other taxing unit shall pass an annual appropriation measure and thereafter during the year may pass such supplemental appropriation measures as it finds necessary, based on the revised tax budget and the official certificate of estimated resources or amendments thereof. * * *

"Sec. 5625-33. No subdivision or taxing unit shall:

* * *

(b) Make any expenditure of money unless it has been appropriated as provided in this act (G. C. §§ 5625-1 to 5625-39).

(c) Make any expenditure of money except by a proper warrant drawn against an appropriate fund which shall show upon its face the appropriation in pursuance of which such expenditure is made and the fund against which the warrant is drawn.

* * *

From the above constitutional provision and sections of the code, quoted above, it is evident that no money may be drawn from the county treasury unless it has been appropriated by the county commissioners, who are the taxing authority of the county, in the manner provided by section 5625-29, General Code, and other pertinent sections of the budget law.

The question which you present has been passed upon in the case of *State ex rel. Justice v. Thomas, Aud.*, 35 O. App., 250, decided March 31, 1930. The second paragraph of the syllabus of that case reads as follows:

"The county auditor, as a ministerial officer and as the distributing official of the funds of the county, is strictly limited in issuing warrants by Section 5625-33, General Code, and penalized by Section 5625-37, General Code, for mispayment of moneys of the county."

The facts of the above case disclose that a criminal court bailiff and court constable had been appointed by the judge of the common pleas court and that his salary had been fixed by said judge, by virtue of sections 1541, 1692 and 1693, General Code. The first mentioned section (Section 1541), among other things, authorizes a common pleas judge to appoint a criminal court bailiff and fix his salary "which shall be paid monthly from the county treasury upon the warrant of the county auditor." The facts further show that no specific appropriation had been made by the county commissioners for the salary of the bailiff and court constable. The court, after quoting the part of Section 5625-33, General Code, which I have quoted, *supra*, stated at page 259:

"Inasmuch as there has been no specific appropriation made for the indebtedness represented by the vouchers for the salary of relator, the auditor is without authority to issue his warrants on them and this court is without power to compel him so to do."

Now, Section 2915-1, General Code, mentioned in your communication, is somewhat similar to Section 1541, General Code, in that it provides for the appointment of a secret service officer by the prosecuting attorney and states in the last sentence that the compensation fixed by the common pleas judge or judges shall be "payable monthly out of the county fund, upon the warrant of the county auditor." Therefore, the reasoning of the court in the Thomas case, supra, is exactly in point here, for no money has been appropriated by the county commissioners for the secret service officer in your case, just as no money was appropriated for the bailiff's salary in the Thomas case, supra.

As you will note by the language of the court quoted above, the case held that there was no authority for the county auditor to issue a warrant based on the vouchers presented and that the court could not compel said auditor to do so.

In view of the foregoing discussion, I am of the opinion that the salary of the secret service officer appointed under Section 2915-1, General Code, cannot be paid out of the general fund of the county on the warrant of the county auditor when there has been no appropriation made for his salary by the county commissioners. In reaching this conclusion, I assume that you have no money available in your 3004, General Code, fund at the present time.

I desire to call your attention to the fact that in Opinions of the Attorney General for 1927, volume I, page 438, and Opinions of the Attorney General for 1930, volume III, page 1651, are to be found opinions which hold that a prosecuting attorney may pay a secret service officer out of the fund set aside under Section 3004, General Code. This fund is appropriated in a lump sum by the county commissioners for expenses incurred by the prosecutor in the performance of his official duties, and in the furtherance of justice, not otherwise provided for. In other words, no specific appropriation by the county commissioners for any items legally payable from this fund, is necessary. Hence, if you have any unexpended balance in your 3004 fund, it could be used to pay the present secret service officer without any specific appropriation from the county commissioners.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3730.

DISAPPROVAL, NOTES OF CITY OF LIMA, ALLEN COUNTY, OHIO—
\$500,000, \$25,000 and \$10,000.

COLUMBUS, OHIO, November 4, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN:

Re: Notes of City of Lima, Allen County; Ohio,
\$500,000, \$25,000 and \$10,000.

The transcripts relative to the above purchases of notes disclose that these notes have been authorized in anticipation of the issuance of bonds for the pur-