

nothing in the statute which would limit the scope of this word to the poor who are wards of the county. In fact the terms of the statute seem to indicate the opposite.

Webster says indigent persons are those 'destitute of property or means of comfortable subsistence; needy, poor.'

It is to such persons that the word refers, in my opinion, and not merely to those who are inmates of the county infirmary or children's home, or who are county or township charges."

You are therefore advised that it is the opinion of this department that the fund derived from a tax levy under the provisions of Sections 3138-1 and 3138-2, General Code, may be legally applied to the care of the indigent sick and disabled of the county at large entitled thereto under the law, and the application of said fund is not limited to the care of those who are county or township charges.

Respectfully,

EDWARD C. TURNER,

Attorney General.

22.

SPECIAL CONSTABLE—UNDER SECTION 3331, PARAGRAPH 4, G. C., POWERS AND AUTHORITY LIMITED TO CASE FOR WHICH APPOINTED—NOT CLOTHED WITH POWERS OF QUALIFIED AND ACTING CONSTABLE—WHEN ENTITLED TO ALLOWANCE IN LIEU OF FEES.

SYLLABUS:

1. *The powers and authority of a special constable appointed in a civil or criminal case by a justice of the peace for a special purpose by virtue of paragraph 4, Section 3331 of the General Code, are limited to the case and for the purpose for which such constable is appointed, and he is not, by such appointment clothed generally with the powers or authority of a regularly elected or appointed, qualified and acting constable.*

2. *A special constable appointed in a civil or criminal case by a justice of the peace for a special purpose, under provisions of Section 3331 of the General Code, may legally receive an allowance in lieu of fees in felonies where the state fails, and in misdemeanors wherein the defendant proves insolvent, as provided by Section 3019 of the General Code, provided the justice making said appointment made a memorandum on his docket of a special appointment in said particular case.*

COLUMBUS, OHIO, January 25, 1927.

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

GENTLEMEN:—I am in receipt of your letter of January 17, 1927, wherein you request my opinion upon the following questions:

"1. When a justice of the peace appoints a special constable for the reasons stated in paragraph 4 of Section 3331, G. C., may such special constable make arrests and file affidavits before a justice of the peace other than the one making the appointment; and may he serve process issued out of the courts of justices of the peace other than the one making the appointment?"

2. May such special constable legally receive an allowance in lieu of fees in felonies wherein the state fails to convict or in misdemeanors in which the defendant proves insolvent, as provided by Section 3019 of the General Code?"

The office of justice of the peace is created by statute, and the person holding such office has only those powers and authority as are given by law.

Statutes provide for the trustees of a township to direct the number of constables to be elected, and if a vacancy occurs, they may appoint a suitable person to fill the vacancy. It was not the intention of the legislature to give a justice of the peace power to appoint constables for a township, except in certain cases.

Section 3331 of the General Code provides :

"A justice of the peace may appoint a constable or constables for a special purpose, either in civil or criminal cases, when such appointment becomes necessary in the following cases :

* * * * *

4. When, from the pressure of official business, the constables therein are not able to perform the duties required by the office. The justice making the appointment, shall make a memorandum thereof on his docket and require the person appointed to take an oath, as in other cases."

The language used in Section 3331 of the General Code, above quoted is: "A justice of the peace may appoint a constable or constables *for a special purpose, either in civil or criminal cases.*"

The statute further provides "when such appointment becomes necessary," in one of the enumerated cases in said section "the justice making the appointment shall make a memorandum thereof on his docket."

The justice of the peace exercises discretion, both in determining whether one of the grounds upon which the appointment is authorized exists, and in his selection of a proper person to be appointed.

A special constable can only be appointed under paragraph 4 of Section 3331 of the General Code in a civil or criminal case then pending. Created by special appointment and for a special purpose in a civil or criminal case, a memorandum whereof is on the docket of the justice, such appointee is a "special constable" only while acting in pursuance thereof. He is not clothed with the powers of a constable, except for such "special purpose." A distinct and separate appointment is essential for each special purpose wherein his services are necessary, either in a civil or criminal case and the justice of the peace must make a memorandum of each such special purpose on his docket. Such special constables have no authority to serve warrants or to make arrests by virtue of their special appointment, except in the particular case in which they are appointed a "special constable." When the duties of his appointment have been performed his appointment as a "special constable" automatically terminates.

In answer to your first question it is my opinion that the powers and authority of a special constable appointed in a civil or criminal case by a justice of the peace for a special purpose by virtue of paragraph 4, Section 3331 of the General Code, are limited to the case and for the purpose for which such constable is appointed, and he is not, by such appointment, clothed generally with the powers or authority of a regularly elected or appointed, qualified and acting constable.

While performing the duties of his special appointment, a "special constable" is entitled to receive the fees therefor as provided by law. If regularly appointed by provisions of paragraph 4 of Section 3331 of the General Code in a civil or criminal

case, provided the justice making the appointment makes a memorandum thereof on his docket, any person so appointed would be entitled to the regular fees for services rendered pursuant thereto. Such fees are money due to the officer for services performed.

Section 3332 of the General Code provides:

“After taking such oath, the person so appointed, shall have the same authority, be subject to the same penalties, and entitled to the same fees, as other constables.”

Section 3019 of the General Code provides:

“In felonies wherein the state fails, and in misdemeanors wherein the defendant proves insolvent, the county commissioners at the first meeting in January shall make an allowance to justices of the peace and constables, in the place of fees, but in no year shall the aggregate allowance to such officer exceed the fees legally taxed to him in such causes, nor in any calendar year shall the aggregate amount allowed such officer and his successor, if any, exceed one hundred dollars. * * * ”

In answer to your second question it is my opinion that a special constable appointed by a justice of the peace for a special purpose under provisions of Section 3331 of the General Code, may legally receive an allowance in lieu of fees in felonies wherein the State fails, and misdemeanors wherein the defendant proves insolvent, as provided by Section 3019 of the General Code, provided the justice making said appointment made a memorandum on his docket of the special appointment in said particular case.

Respectfully,
EDWARD C. TURNER,
Attorney General.

23.

APPROVAL, FINAL RESOLUTION, ROAD IMPROVEMENT IN JEFFERSON COUNTY, I. C. H. NO. 7, SECTION M-2.

COLUMBUS, OHIO, January 25, 1927.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

24.

JOINT BOARD OF COUNTY COMMISSIONERS—UNDER SECTIONS 6930 ET SEQ., G. C., MAY CONSTRUCT AND IMPROVE ANY PART OR ALL OF COUNTY LINE ROAD LYING WITHIN MUNICIPALITY—AUTHORITY FROM COUNCIL UNDER SECTION 6949 G. C.

SYLLABUS:

A joint board of county commissioners when acting under authority of Section