

4231.

COMPENSATION—COUNSEL EMPLOYED BY TOWNSHIP TO ASSIST
PROSECUTING ATTORNEY—PAID FROM GENERAL FUND OF
TOWNSHIP RATHER THAN ROAD FUND.

SYLLABUS:

The compensation of legal counsel employed by a township to assist the prosecuting attorney in defending a suit involving the cutting and burning of brush on one of the township roads, should be paid from the township general fund and not from the township road fund.

COLUMBUS, OHIO, April 4, 1932.

HON. FRED W. EVERETT, JR., *Prosecuting Attorney, Jackson, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent communication, requesting my opinion, which reads:

"I would like to present the following question for your decision. The Township Trustees of Coal Township of this County have been sued for damages by reason of the negligence of one of their employees in cutting and burning brush on one of the township roads within their jurisdiction. They desire to employ counsel to assist me in the trial of this matter, and have no funds in their general fund, but have a considerable amount in their road fund.

Is it possible for them to employ counsel to assist me in this matter and pay for such counsel from the road fund, since the appointment was made necessary by their duties in respect to the maintenance of township roads, or does the provision of the statute that such money shall be paid from the township funds mean the general township fund?

I shall thank you for an early opinion on this matter as the question as to whether or not they will employ counsel to assist me will depend upon your decision in this matter, and the suit is already pending in court."

Section 3374-2, General Code, reads as follows:

"All brush, briars, burrs, vines, Russian or Canadian, or common thistles or other noxious weeds growing along the public highway shall be cut between the first and twentieth days of June and the first and twentieth days of August of each year, and if necessary between the first and twentieth days of September of each year. This work shall be done by the township trustees in their respective townships, or by the township highway superintendent, if one be appointed, who may employ the necessary labor to carry out the provisions of this section. All expenses incurred shall, when approved by the township trustees, be paid from the township road fund by the township treasurer upon the warrant of the township clerk."

Section 2917, General Code, relative to the duties of the prosecuting attorney, reads in part as follows:

"* * * * He shall be the legal adviser for all township officers, and

no such officer may employ other counsel or attorney except on the order of the township trustees duly entered upon their journal, in which the compensation to be paid for such legal services shall be fixed. Such compensation shall be paid from the township fund."

The question arises as to whether the words "township funds" as used in Section 2917, General Code, mean only the general fund or can such words be interpreted to include the township road fund.

In an opinion found in the Annual Report of the Attorney General for 1912, Vol. I, p. 283, the then Attorney General held, in interpreting the words "township treasury" as used in Section 3294, that the same connotes the general fund and it follows that in the instant case, the words "township fund" should be so construed.

This is apparent from a consideration of the fact, as evidenced by Section 3374-2, that when the legislature intended that the payment of expenses for certain services be paid from the road fund, it expressly so indicated.

The argument may be made that Section 3374-2, above quoted, authorizes the expense of the employment of legal counsel by the township as an expense incurred in the cutting of briars, brush, noxious weeds, etc., along a public highway. It should be noted, however, that the legislature has specifically authorized the procedure by which a township may engage legal counsel and also has indicated that the expense of the same should be payable from the general fund.

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that the compensation of legal counsel employed by a township to assist the prosecuting attorney in defending a suit involving the cutting and burning of brush on one of the township roads, should be paid from the township general fund and not from the township road fund.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4232.

APPROVAL, BONDS OF BEDFORD CITY SCHOOL DISTRICT, CUYA-HOGA COUNTY, OHIO—\$4,000.00.

COLUMBUS, OHIO, April 4, 1932.

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

4233.

SHERIFF—LIABLE FOR MONEYS RECEIVED IN HIS OFFICIAL CAPACITY UNLESS PREVENTED BY ACT OF GOD OR PUBLIC ENEMY—EXCEPTION IN REGARDS PARTITION MONEYS.

SYLLABUS:

1. *In view of the provisions of Section 2842, General Code, and the bond required in Section 2824, General Code, as interpreted by the case of Seward vs.*