

1168.

CHIEF PROBATION OFFICER—SALARY—MUST BE WITHIN APPROPRIATION OF COUNTY COMMISSIONERS—SECTIONS 5625-29 AND 5625-32, GENERAL CODE, DISCUSSED.

SYLLABUS:

A chief probation officer can not receive a salary in excess of the amount appropriated, as provided in Sections 5625-29 and 5625-32 of the General Code, by the county commissioners.

COLUMBUS, OHIO, October 19, 1927.

HON. OTTO J. BOESEL, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion, as follows:

“Judge C., of the Juvenile Court, under date of August 1, 1927, placed an entry upon the Court records increasing the salary of his Chief Probation Officer from one hundred dollars to one hundred and twenty-five dollars per month, and a certified copy of said entry has been filed with the County Auditor.

The County Auditor now refuses to issue a voucher for said monthly salary of \$125.00, stating as his reason therefor that in January of this year the Board of County Commissioners of Auglaize County, appropriated but the sum of twelve hundred dollars to cover the annual salary of the Chief Probation Officer, and in view of the fact that the salary now fixed by the Court would exceed the appropriation, hence he refuses to pay it. The order increasing the salary of the Chief Probation Officer was made by Judge C., of the Juvenile Court, under and by virtue of Section 1662 of the General Code of Ohio, the Court taking the position that said section empowers him to appoint a Chief Probation Officer, fix his salary at the time of appointment, and increase or diminish the same, as the Court deems just and proper.

In view of the provisions of General Code Section 1662, and the order of the Court fixing the salary of the Chief Probation Officer at one hundred and twenty-five dollars per month, is the County Auditor required or compelled to issue a voucher for his salary, as fixed by the Juvenile Judge, or is it within the province of the Board of County Commissioners to nullify the provisions of Section 1662 of the General Code, and refuse to make the necessary appropriation for the payment of the salary of the Chief Probation Officer, as fixed by the Court.

I might add that the Chief Probation Officer of the county is under Civil Service, and has been duly appointed Chief Probation Officer by the Juvenile Court of the county.

Since the entry of the Court fixing his salary at one hundred and twenty-five dollars per month has been made by the Juvenile Court, the Auditor has refused to issue a voucher in said amount, and consequently the Juvenile Officer has not drawn his salary; in view of this situation I would be pleased to have your opinion. Let me have your opinion in this matter at an early date.”

I take your question to be whether or not the juvenile officer can draw for his services during the year the amount fixed by the juvenile judge, when said amount exceeds that which has been appropriated for such position by the county commissioners.

The power of the juvenile judge to fix compensation is given by Section 1662 of the General Code, which reads as follows:

"The judge designated to exercise jurisdiction may appoint one or more discreet persons of good moral character, one or more of whom may be a woman, to serve as probation officers, during the pleasure of the judge. One of such officers shall be known as chief probation officer and there may be one or more assistants. Such chief probation officer and assistants shall receive such compensation as the judge appointing them may designate at the time of the appointment; provided, however, that such compensation may be increased or decreased at any time by said judge, but the compensation of the chief probation officer shall not exceed four thousand dollars per annum and that of the assistants shall not exceed twenty-four hundred dollars per annum. The judge may appoint other probation officers, with or without compensation, when the interests of the county require it.

The compensation of the probation officers shall be paid by the county treasurer from the county treasury upon the warrant of the county auditor, which shall be issued upon itemized vouchers sworn to by probation officers and certified to by the judge of the juvenile court. The county auditor shall issue his warrant upon the treasury and the treasurer shall honor and pay the same, for all salaries, compensation and expenses provided for in this act, in the order in which proper vouchers therefor are presented to him."

We have many other provisions of law whereby the appointing officer is authorized and empowered to fix the salaries of the employes. All of these sections, however, must be read in connection with the provisions of some of the sections of House Bill No. 80 of the 87th General Assembly 112 Ohio Laws, 391, which is an act "Providing for levying of taxes by local subdivisions and their method of budget procedure; * * *."

Section 29 of that act, Section 5625-29, General Code, reads as follows:

"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. If it desires to postpone the passage of the annual appropriation measure until an amended certificate is received based on the actual balances, it may pass a temporary appropriation measure for meeting the ordinary expenses of the taxing unit until not later than April first of the current year, and the appropriations made therein shall be chargeable to the appropriations in the annual appropriation measure for that fiscal year when passed."

Section 32 thereof, Section 5625-32, General Code, provides:

"Any appropriation ordinance or other appropriation measure may be amended or supplemented from time to time, provided that such amendment or supplement shall comply with all provisions of law governing the taxing authority in making an original appropriation and provided further, that no appropriation for any purpose shall be reduced below an amount sufficient to cover all unliquidated and outstanding contracts or obligations certified from or against the appropriation for such purpose. Transfers may be made by resolution or ordinance from one appropriation item to another. At the close of each fiscal year, the unencumbered balance of each appropriation

shall revert to the respective fund from which it was appropriated and shall be subject to future appropriations; provided, however, that funds unexpended at the end of such fiscal year and which had theretofore been appropriated for the payment or performance of obligations unliquidated and outstanding, shall not be required to be reappropriated, but such unexpended funds shall not be included by any budget making body or board or any budget commission in estimating the balance or balances available for the purposes of the next or any succeeding fiscal year.

The annual appropriation measure or an amendment or supplement thereto, may contain an appropriation for contingencies not to exceed three per cent of the total appropriation for current expenses. By a two-thirds vote of all members of the taxing authority of a subdivision or taxing unit, expenditures may be authorized in pursuance of such contingency appropriation for any lawful purpose for which public funds may be expended, if such purpose could not have reasonably been foreseen at the time of the adoption of the appropriation measure."

Similar provisions were formerly contained in Sections 5649-3g and 5649-3h, General Code, which sections were repealed by said House Bill No. 80.

Section 33 of that act, Section 5625-33, General Code, provides in part as follows:

"No subdivision or taxing unit shall:

* * * * *

(b) Make any expenditure of money unless it has been appropriated as provided in this act.

* * * * *

This provision is similar to the provisions of Section 5660, General Code, repealed by said act.

I also call your attention to Section 38 of the act, Section 5625-38, General Code, which provides:

"Each political subdivision shall have authority to make expenditures for the payment of current pay rolls upon the authority of a proper appropriation for such purpose provided that the positions of such employees and their compensation have been determined prior thereto by resolution or ordinance or in the manner provided by law. The total expenditures for such purpose during the first half of any fiscal year shall not exceed six-tenths of the appropriation therefor unless the taxing authority of such subdivision by a three-fourths vote of all members thereof waives such limitation, and in the resolution waiving such limitation there shall be set forth their reason therefor."

Said House Bill No. 80 made no material change in the law as it formerly existed, in so far as it pertains to your question. I therefore direct your attention to former opinions rendered upon questions very similar to the one presented by you.

In Opinion No. 59, issued on February 9, 1927, it was held:

"1. County commissioners have full authority to fix the amount of the appropriation for deputy hire in the various county offices, and each

county officer in fixing the compensation to be paid to his deputies, assistants, clerks, bookkeepers and other employes is limited to the amount of the appropriation.

2. An appropriation measure governing money for deputy hire in county offices when once passed by county commissioners, may be amended by either increasing or reducing the amount appropriated for such purpose, and the county officer appointing such deputies, assistants, clerks, bookkeepers and other employes, cannot expend in any fiscal year a greater sum for the salary of such deputies and other assistants than is fixed in the appropriation measure as amended."

In Opinion No. 76, issued February 12, 1927, it was held:

"2. County commissioners by virtue of the authority vested in them by the provisions of General Code 5649-3g and 5649-3h to fix the amount of the appropriations, have the power to regulate the aggregate amount, to be expended by the prosecuting attorney in any one year, of the allowances made to him by virtue of Section 3004-1 of the General Code.

3. The court in fixing an allowance under Section 3004-1 of the General Code must look to the appropriation made by the county commissioners for that purpose. If the court makes an allowance in excess of the amount appropriated and the county commissioners do not within the fiscal year amend their appropriation measure so as to include the amount of such allowance, then although such allowance is not illegal, it is ineffective."

In Opinion No. 156, issued on March 8, 1927, it was held:

"1. The aggregate amount of compensation that can be paid to any public official or employee, for and during any fiscal year, is limited by the amount appropriated therefor.

2. When an appropriation is made by county commissioners for the yearly compensation of the superintendent and matron of a county children's home which is of a lesser amount than their salaries have theretofore been fixed, it becomes the duty of the trustees of the home to fix the salaries to conform to the appropriation."

In Opinion No. 745, issued on July 19, 1927, it was held:

"It is the duty of the county commissioners to make an appropriation for the purpose of paying the salary of the deputy sealer of weights and measures for an entire year and to fix said salary within the amount of said appropriation, unless, in the exercise of a reasonable discretion, such commissioners determine that, within the funds available, such an appropriation cannot be made."

These opinions refer to the question of whether or not the compensation fixed by the appointing officer under the authority of law would permit the appointee to receive more compensation than was appropriated by the county commissioners for such purpose, and in each case it was held, as hereinabove set forth, that no money could be paid for salaries of such officers in excess of the amount appropriated by the county commissioners.

Therefore, it is my opinion that a chief probation officer can not receive a salary in excess of the amount appropriated, as provided in Sections 5625-29 and 5625-32 of the General Code, by the county commissioners.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1169.

TOWNSHIP TRUSTEES—EMPLOYMENT OF MINOR SON OF A TRUSTEE
TO PERFORM WORK FOR THE TOWNSHIP, DISCUSSED.

SYLLABUS:

1. *In case of employment of the minor son of the township trustee to perform work for the township, for which the son is to be paid from township funds, a presumption exists that the father is interested in the profits of his son's labor. This presumption is rebuttable by showing that the minor son is emancipated and that the father is not in fact interested in the profits of his son's contract, job, work or services.*

2. *The employment of the minor son of a township trustee to perform labor for the township of which he is trustee and for which the son is to be paid from township funds, is not necessarily a violation of Section 12912, General Code. To sustain a conviction under Section 12912, it would be necessary affirmatively to prove beyond the existence of a reasonable doubt that the township trustee, in the employment of his minor son to do township work, was interested in the profits of his son's services, and the presumption referred to in the paragraph above would be overcome by showing complete or partial emancipation of the son.*

3. *Where a minor child of a township trustee, to-wit, a boy of about fifteen years of age, is not emancipated and is employed to perform work for the township, using at times his father's team, the father, being under the law entitled to the services and earnings of such minor child, is interested in the profits of the son's work or services for such township in violation of Section 12912 of the General Code.*

4. *The provisions of Sections 3294 and 3372, General Code, wherein it is provided that a township trustee shall not receive for his services as such trustee an aggregate sum of more than \$250.00 in any one year, has reference to the aggregate amount of fees and daily stipends to be paid to such trustee, as provided by law.*

COLUMBUS, OHIO, October 19, 1927.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

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

“In re: Sections 3294, 3372, 12912, General Code.

A township trustee draws the limit of \$250.00 for road work. His son is employed, a boy of fifteen or sixteen years, not emancipated, does road work, using at times his father's team, and puts in a bill for services, being in excess of \$100.00. Admitting that the boy, in good faith performs real serv-