

1354.

SEALER OF WEIGHTS AND MEASURES—MAY CHARGE FEES AND PAY SAME INTO COUNTY TREASURY.

SYLLABUS:

Fees may be charged by the county sealer or his deputy against all persons owning the weights and measures sealed by them and such fees must be paid into the county treasury under the provisions of section 2977 G. C.

COLUMBUS, OHIO, April 14, 1924.

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

GENTLEMEN:—I am in receipt of your recent communication as follows:

“Section 2623 General Code provides that the sealer of weights and measures may receive certain fees for the services performed in sealing said devices.

Question 1.

Should the fees provided by section 2623 G. C. be charged by a deputy sealer for his services in sealing each weight or measure, and fees thus earned be paid into the county treasury?

Question 2.

Should the fees provided by section 2623 G. C. be charged by the sealer of weights and measures and paid into the county treasury?

Question 3.

Under what circumstances may the fees provided in section 2623 G. C. be charged to the person owning the weights and measures sealed by the sealer or deputy sealer of weights and measures?”

Section 2615 General Code of Ohio, provides:

“By virtue of his office, the county auditor shall be county sealer of weights and measures and shall be responsible for the preservation of the copies of the original standards delivered to his office. It shall be the duty of the county auditor to see that all state laws relating to weights and measures be strictly enforced throughout his county and to assist generally in the prosecution of all violations of such laws.”

Section 2616, General Code, provides, as far as pertinent:

“The county sealer shall compare all weights and measures, brought to him for that purpose, with the copies of standards in his possession. * * *”

The balance of said section 2616 relates to how the county sealer shall seal such weights and measures and provides for a penalty for violation of such section.

By the above sections, the county auditor is made the county sealer and his duties in relation thereto are prescribed.

Section 2622, General Code, provides for the appointment of a deputy sealer and is as follows:

“Each county sealer of weights and measures shall appoint by writing under his hand and seal, a deputy who shall compare weights and measures

wherever the same are used or maintained for use within his county, or which are brought to the office of the county sealer for that purpose, with the copies of the original standards in the possession of the county sealer, who shall receive a salary fixed by the county commissioners, to be paid by the county, which salary shall be instead of all fees or charges otherwise allowed by law. Such deputy shall also be employed by the county sealer to assist in the prosecution of all violations of laws relating to weights and measures."

Section 2623, as far as pertinent, provides :

"Each sealer may receive for his services the following fees: * * *"

Section 2625, as far as pertinent, provides :

"In addition to the compensation specified in the preceding section, each county auditor shall receive the compensation provided by law for his services as county sealer. * * *"

Section 2625, supra, was originally Revised Statutes section 1071, and was carried into the codification as section 2625 without change, although such section was apparently repealed by implication by enactment in 98 O. L., page 89, which act was repealed in 108 O. L., Part II, page 1203, and section 2977, General Code, enacted, which provides as follows :

"All fees, costs, percentages, penalties, allowances and other perquisites collected or received by law as compensation for services by a county auditor, county treasurer, probate judge, sheriff, clerk of courts, surveyor or recorder, shall be so received and collected for the sole use of the treasury of the county in which they are elected and shall be held as public moneys belonging to such county and accounted for and paid over as such as hereinafter provided."

It is not believed that the carrying of such impliedly repealed statutes in the report of the codifying commission was reviving such statute.

In the case of State ex rel. Enos vs. Stone, 92 O. S., 63, the court say :

"Such policy of the general assembly should not be overturned or invaded by carrying or re-enacting such impliedly repealed statute in the report of a codifying commission, which is subsequently adopted by the General Assembly, or by some subsequent enactment of the general assembly, unless such other statute clearly evinces by appropriate language an intention and purpose to provide 'an additional salary.'"

The enactment in 108 O. L., Part II, page 1203, would repeal by implication section 2625 G. C., if there was any doubt on such question. This belief is supported by the case of State ex rel Enos vs. Stone, supra, where it was held :

"When the general assembly of Ohio has entered upon a general policy of legislation, such as the abolition of the fee system and the establishment of fixed and certain lump sums as compensation for county officers, and provided that such compensation shall be in full payment for all services rendered as such public officer, such general statutes declaring such policy repeal by implication all other statutes in conflict therewith."

As section 2623, General Code, provides that the sealer may charge certain fees, it is my opinion that fees may be charged by the county sealer or his deputy against all persons owning the weights and measures sealed by the county sealer or deputy and such fees must be paid into the county treasury under the provisions of section 2977 G. C.

Respectfully,
C. C. CRABBE,
Attorney General.

1355.

COUNTY CHILDREN'S HOMES—WHEN SUPPLIES SHOULD BE PURCHASED FROM THE DEPARTMENT OF WELFARE—SECTION 1847 G. C. CONSTRUED.

SYLLABUS:

Officials of county children's homes are required, under the provisions of section 1847 of the General Code, to purchase needed articles for such institutions, which articles the department of public welfare is prepared to supply, from the department of welfare, in the event the department of welfare has notified such officials in writing that said department is prepared to supply such articles, unless the department of welfare, having been requested to furnish such articles, shall give notice to such officials, in writing, that the same cannot be furnished within thirty days from the date of the request.

COLUMBUS, OHIO, April 14, 1924.

HON. J. KENNETH WILLIAMSON, *Prosecuting Attorney, Xenia, Ohio.*

DEAR SIR:—Receipt is acknowledged of your recent communication, in which you submit the following inquiry:

“Are Superintendents of County Children’s Homes compelled to purchase supplies such as can be obtained from The Ohio Welfare Department under section 1847 G. C., or can supplies for said Homes be purchased from merchants in their home town?”

Section 1847 of the General Code reads:

“The board shall, with the advice and consent of the secretary of state and auditor of state, classify public buildings, offices and institutions and determine the kinds, patterns, designs and qualities of articles to be manufactured for use therein, which shall be uniform for each class, so far as practicable. Whenever the board shall give written notice to the state purchasing agent or other official or officials having lawful authority to purchase such article or articles that it is prepared to supply them from any institution under its control, such state purchasing agent or other official or officials shall make any needed purchases of said articles from such institution unless the chief officer thereof, or the board having been requested to furnish such article or articles shall give notice in writing that the same cannot be furnished within thirty days from the date of the request. Provided, however, that if the state purchasing agent requires such article or articles within thirty days from the day of making such request and so