

By the provisions of the first paragraph of Section 2412-1, supra, boards of county commissioners, whenever they deem it necessary, may purchase motor vehicles for the use of the sheriff or sanitary engineer, their deputies or necessary employes. In the second paragraph it is provided that when boards of county commissioners deem it necessary, they may purchase motor vehicles "for their use or for the use of any department under their direct control" upon application to and approval by a judge of the Court of Common Pleas.

In answering the question that you present it is unnecessary to determine whether or not a county dog warden is a "department" as that word is used in Section 2412-1, supra.

Suffice it to say, as provided by Section 5652-7, supra, county commissioners are directed to "appoint or employ a county dog warden and deputies to such number, for such periods of time, and at such compensation, as such county commissioners deem necessary." Such dog wardens and deputies are required to "patrol their respective counties; seize and impound on sight all dogs more than three months of age, found not wearing a valid registration tag," to "investigate all claims for damages to live stock inflicted by dogs," and to "make *weekly reports, in writing, to the county commissioners* of their respective counties of all dogs seized, impounded, redeemed and destroyed, also, all claims for damage to live stock inflicted by dogs." They are therefore employes of and under the supervision of the county commissioners.

By the terms of Section 2412-1, supra, ample authority is vested in boards of county commissioners to purchase motor vehicles "for their use" upon application to and approval by a judge of the Court of Common Pleas. A vehicle so purchased, by the terms of Section 2412-2, supra, "shall be for the use of the county commissioners, or other county officers, such use to be subject to the regulation of the county commissioners" and used "by each such officials or said deputies and employes in lieu of hiring vehicles."

In view of the foregoing and answering your question specifically it is my opinion that, by the terms of Section 2412-1, General Code, a board of county commissioners has authority to purchase a motor vehicle or vehicles, with the approval of a judge of the Court of Common Pleas, for their use or for the use of any department under their direct control. Such board has authority to place such a vehicle at the disposal of a county dog warden or deputies upon such regulations as such board may prescribe in order that the dog warden or deputies, if any, may carry out the duties imposed by law. The purchase price of such a vehicle must be appropriated out of the general fund of the county in accordance with law.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1554.

SUPERINTENDENT OF PUBLIC WORKS—LEGAL DESIGNATION FOR ADMINISTRATIVE PURPOSES.

SYLLABUS:

The legal title or name of the office held by the person administering the department of public works is "superintendent of public works" and this designation should be used in the execution of all documents requiring the signature of such

department head. If the incumbent of such office sees fit so to do, there is no legal objection to adding to the above term the words "as (or and) director of public works."

COLUMBUS, OHIO, January 9, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of January 4, 1928, which reads as follows:

"The question has come up in the department as to what is the correct title to be used in the execution of documents requiring the signature of the department head, and also in the general correspondence of this department.

Under the provisions of House Bill No. 167, as passed by the 87th General Assembly, (O. L. 112, Page 430, et seq.) entitled An Act, 'To revise the laws relating to the department of highways and the state highway system, and to amend certain sections of the General Code, relative to the improvement, construction and maintenance of state, county, township, and municipal highways,' certain administrative departments were created under Section 154-3, among which is the Department of Public Works, 'which shall be administered by the Superintendent of Public Works as Director thereof,' and under Section 154-40, it is provided that the Department of Public Works shall have all the powers and perform all the duties vested by law in the Superintendent of Public Works, and the State Building Commission.

Section 12 of Article 8 of the constitution of Ohio as amended September 3, 1912, provides that, 'So long as this state shall have Public Works, which requires superintendence, a Superintendent of Public Works shall be appointed by the governor for the term of one year, with the powers and duties now exercised by the Board of Public Works, until otherwise provided by law, and with such other powers as may be provided by law.'

Section 153-3 creating administrative departments, creates the Department of Public Works which shall be administered by the Superintendent of Public Works, as the Director thereof. This phrase is somewhat cumbersome, especially in carrying on the correspondence pertaining to the Department."

As pointed out in your letter, Section 12 of Article VIII of the constitution of Ohio, provides that so long as this state shall have public works requiring superintendence, "a *Superintendent of Public Works* shall be appointed by the governor for the term of one year," with the powers formerly exercised by the board of public works, until otherwise provided by law, and with such other powers as may be provided by law.

Section 404 of the General Code, in the chapter entitled "Superintendent of Public Works" reads as follows:

"There shall be a Superintendent of Public Works of Ohio, who shall be a practical civil engineer and shall be appointed by the governor and shall hold his office for a term of one year from date of appointment and until his successor is duly qualified."

This section was enacted in its present form on March 6, 1913, as part of an emergency act, Section 3 declaring that an emergency lay "in the fact that property of great value belonging to the State of Ohio, to-wit: Canals, reservoirs, dams and

feeders (could not) be properly safeguarded and managed without changing the law in conformity to the amendment of Section 12 of Article VIII of the constitution of the State of Ohio, establishing the office of the Superintendent of Public Works of Ohio."

Section 154-3, General Code, as amended in the "Norton-Edwards Bill," passed by the 87th General Assembly on April 21, 1927, and by its terms effective the first Monday of January, 1928 (112 v. 430, 478), provides that:

"The following administrative departments are created:

The Department of Finance, which shall be administered by the Director of Finance, hereby created;

The Department of Commerce, which shall be administered by the Director of Commerce, hereby created;

The Department of Public Works, which shall be administered by the Superintendent of Public works as director thereof;

The Department of Highways, which shall be administered by the Director of Highways, hereby created;

The Department of Agriculture, which shall be administered by the Director of Agriculture, hereby created;

The Department of Health, which shall be administered by the Director of Health, hereby created;

The Department of Industrial Relations, which shall be administered by the Director of Industrial Relations, hereby created;

The Department of Education, which shall be administered by the Superintendent of Public Instruction, as director thereof;

The Department of Public Welfare, which shall be administered by the Director of Public Welfare, hereby created.

The director of each department shall, subject to the provisions of this act, exercise the powers and perform the duties vested by law in such department."

Sections 154-40 and 2250, General Code, as amended in the same act (112 v. 479, 481) respectively provide in part as follows:

Sec. 154-40. "The Department of Public Works shall have all powers and perform all duties vested by law in the Superintendent of Public Works and the state building commission. Wherever powers are conferred or duties imposed upon any such department, offices or officers, such powers and duties shall, except as herein provided, be construed as vested in the Department of Public Works.

* * * "

Sec. 2250. "The annual salaries of the appointive state officers and employes herein enumerated shall be as follows:

Department of Finance:

Director of Finance, six thousand, five hundred dollars.

* * *

Department of Public Works:

Superintendent of Public Works as Director of Public Works, six thousand, five hundred dollars.

* * *

Department of Education:

Superintendent of Public Instruction as Director of Education, six thousand, five hundred dollars.

* * * "

By the terms of Section 12, Article VIII of the constitution, an appointive state office is created, the title or designation of the officer being, in the words of the section, "Superintendent of Public Works." It is clearly apparent that this was recognized by the legislature, not only in Section 404, supra, and the emergency clause contained in the act in which Section 404 was enacted, but in Sections 154-3, 154-40 and 2250, General Code, as well.

It will be observed that Section 154-3 first creates the Department of Finance, which is to "be administered by the Director of Finance," thereby created. Like provisions are made for the creation of the various departments specified, and the respective administration thereof by the Director of Commerce, Director of Highways, Director of Agriculture, Director of Health, Director of Industrial Relations, and Director of Public Welfare. After creating the Department of Public Works, however, it is provided that this department "shall be administered by the *Superintendent of Public Works* as director thereof." In like manner it is provided that the Superintendent of Public Instruction, which is also an appointive state office created by the constitution (see Section 4, Article VI and Section 352, General Code) shall administer the Department of Education.

The same distinction is made in Section 2250, supra, which fixes the salaries of directors of the different departments and of the "Superintendent of Public Works as Director of Public Works" and the "Superintendent of Public Instruction as Director of Education."

Since, therefore, the term "Superintendent of Public Works" is used in the section of the constitution creating such office and Section 404, General Code, enacted pursuant thereto, the legislature in Sections 154-3, 154-40 and 2250, General Code, creating and making certain provisions with reference to the Department of Public Works, having recognized this office and title and expressly provided that such department should be administered by the "Superintendent of Public Works" as director, it is my opinion that "Superintendent of Public Works" is the correct and legal title or name of the officer in question.

In this connection, however, I know of no objection, if you see fit so to do, to your using the title "Superintendent of Public Works and Director of Public Works," or "Superintendent of Public Works as Director of Public Works," or, where the heading or context of a document will permit, the title "Superintendent of Public Works, as director;" but the words "Superintendent of Public Works" should always be used, especially where acting in those matters in which discretionary power is by law vested in such officer. In fact, in many cases the words "Director of Public Works" should be also used.

It is a rule of law that where an instrument in writing purports to have been duly signed and executed by an officer, and the genuineness of his signature can be presumed, the official character of the officer as stated will also be presumed. In Section 2168, page 617, Vol. 4 of his work on Evidence, Wigmore says as follows:

"It has already been noted (*ante*, Sec. 2161) that the acceptance of a purporting official document necessarily assumes, not only that the document was genuinely executed by the person named, but that the person thus claiming to act officially was in fact the lawful official having that character. The latter element is a fact external to the document, and is not included in the process of authentication in the narrow sense; nevertheless it may be equally supplied or assumed, by the principle of judicial notice or otherwise. * * *

Suppose that a purporting official document by J. S. under seal of office is presumed genuine; there remains to be accounted for the element of J. S. being the officer that he purports in the document to be. This element can be supplied by the principle of judicial notice. On turning to that principle,

however, we find (*post*, Sec. 2576) that in strictness it does not always extend below certain supreme or central officers, *i. e.* to accept as true, without any evidence whatever, the allegation that J. S. is the incumbent of a certain office, is a step that may be sanctioned for the president, the governor, the judges of the highest court, and a few other officers, but not always for officers below these. For the inferior officers, then, may be required *some* evidence. Upon slight evidence a presumption may be built—for example, so as to dispense with proof of the document of appointment; but there must be at least some evidence, as a foundation for a presumption. Accordingly, for such officers there is a *presumption of office* (*post*, 2535). This presumption may not be raised in all kinds of issues—for example, not in a direct proceeding to try the title to the office, and perhaps not in some criminal proceedings; but in general it suffices. The official character of the person, then, is reached, either by accepting it without any evidence (judicial notice), or by raising a presumption upon certain evidence. This presumption is usually raised whenever the person is shown to be *acting in the office* under claim of incumbency (*post*, Sec. 2535).

Now, as applied to purporting official documents, this requirement is satisfied by the *documents purporting to be executed by him as an officer*; for this is an acting in the office. By the rule of authentication we have presumed that J. S. did actually sign and seal, purporting to do so as officer of the sort named; upon this act, then, the presumption of office may be raised. Thus, for official documents the presumption of authentication is usually found followed by the presumption of office, though the latter presumption has an independent and larger existence of its own, and is also applied to official acts other than documentary ones. It merely follows naturally when the genuineness of the document is reached by the presumption of genuineness.

It is convenient to note here the application of the general presumption to purporting officers executing documents. The rules may be summarized as follows:

(1) Where a document *purports to be executed by an officer*, and the genuineness of the seal or signature can be presumed, the official character (or incumbency of office) of the person thus purporting to act as officer will also be presumed. * * *

(2) Where the document does *not sufficiently purport to be executed as officer*, the presumption cannot be raised, because (as above noted) it rests upon the fact of an acting in office; hence, if the maker of the document does not clearly purport so to act, the required basis for the presumption is lacking. This question is presented most frequently by documents signed by *initials only* or by some other imperfect designation of the office; here a liberal principle must accept as sufficient any symbol plainly intelligible and unmistakably intended to indicate an official act; yet the tendency to follow statutory words literally, and the necessity of fulfilling forms prescribed by the substantive law, leads often to rejection on technical grounds.

* * * "

See also the case of *Donohoo vs. Brannon*, 1 Overt. 327, where it was said that

"an officer ought to state the character in which he does the act; when this is done, the law will presume he possesses the character he assumes."

In specific answer to your question, for the reasons above stated, it is my opinion that the legal title or name of the office held by the person administering the Department of Public Works is "Superintendent of Public Works" and that this designation should be used in the execution of all documents requiring the signature of such department head. If the incumbent of such office sees fit so to do, there is no legal objection to adding to the above term the words "as (or and) Director of Public Works."

Respectfully
EDWARD C. TURNER,
Attorney General.

1555.

APPROVAL, BONDS OF ASHVILLE VILLAGE SCHOOL DISTRICT, PICK-
AWAY COUNTY, OHIO—\$60,000.00.

COLUMBUS, OHIO, January 9, 1928.

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

1556.

DISAPPROVAL, ARTICLES OF INCORPORATION OF THE UNITED MU-
TUAL INSURANCE COMPANY OF HANCOCK, COUNTY, OHIO.

COLUMBUS, OHIO, January 9, 1928.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of the 7th instant in-
closing the proposed articles of incorporation of The United Mutual Insurance Com-
pany of Hancock County, Ohio, for my approval.

I am returning the same to you herewith without my approval endorsed thereon.

These proposed articles of incorporation are apparently offered under the pro-
visions of Section 9593, General Code. This section contemplates the organization of
mutual protective associations. One of its specific requirements is that "any number
of persons of lawful age not less than ten in number," may associate themselves to-
gether for the purpose of insuring each other, etc.

These proposed articles of incorporation have but three incorporators, and it is
my opinion that this is not in compliance with the provision of this section.

Respectfully,
EDWARD C. TURNER,
Attorney General.