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## DISAPPROVAL, LEASE TO CERTAIN LANDS FOR USE OF THE TOLEDO STATE HOSPITAL.

COLUMBUS, OHIO, February 26, 1929.

HON. H. H. GRISWOLD, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date submitting for my examination and approval a certain lease executed by one John J. Curran, whereby he leases and demises to "State of Ohio, Department of Public Welfare, for The Toledo State Hospital," a certain tract of forty acres of land in Adams Township, Lucas County, and which is more particularly described in said lease. Inasmuch as the Department of Public Welfare is not a responsible legal entity separate and apart from the Director thereof, the form of said lease is hereby disapproved and it is suggested that said lease be executed to H. H. Griswold, Director Department of Public Welfare, for The Toledo State Hospital.

It is noted that said lease is for a term of six months and that no option on the part of the lessee to rent the said lands for a further term is reserved. If as a matter of fact it is your intention to reserve such right, the same should be provided for in a new lease to be prepared by your department to be signed and executed by Mr. Curran.

For the reason first above noted herein, the lease submitted is hereby disapproved and the same is returned.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

119.

## COUNTY COMMISSIONERS—APPROPRIATIONS FOR EMPLOYEES OF PROSECUTING ATTORNEY—NO MANDATORY DUTY TO ALLOW SUM FIXED BY JUDGE.

## SYLLABUS:

*It is not the mandatory duty of the county commissioners to appropriate for the compensation of assistants, clerks and stenographers in the office of the prosecuting attorney, an amount of money equal to the aggregate sum allowed for said purpose by the judge or judges of the Common Pleas Court; but such county commissioners may in the exercise of their discretion appropriate for such purpose a sum of money less than that allowed by such judge or judges, and in such case no money can legally be paid out for the compensation of such assistants, clerks and stenographers in excess of the amount appropriated by the county commissioners for said purpose.*

COLUMBUS, OHIO, February 26, 1929.

HON. EARL D. PARKER, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication in which you ask my opinion on the question therein stated as follows:

"Section 2914, G. C., provides in substance that on or before the first Monday of January each year the Judge of the Court of Common Pleas may fix an aggregate sum to be expended for the incoming year, for the

compensation of assistants, clerks and stenographers for the Prosecuting Attorney's office.

Is it mandatory that the commissioners appropriate for this purpose the aggregate sum allowed by such Judge, or can they appropriate a smaller sum?"

Section 2914, General Code, referred to in your communication and Section 2915, General Code, provide as follows:

"Section 2914. On or before the first Monday in January of each year in each county, the Judge of the Court of Common Pleas, or if there be more than one judge, the judges of such court in joint session, may fix an aggregate sum to be expended for the incoming year, for the compensation of assistants, clerks and stenographers of the prosecuting attorney's office.

Section 2915. The prosecuting attorney may appoint such assistants, clerks and stenographers as he deems necessary for the proper performance of the duties of his office, and fix their compensation, not to exceed in the aggregate the amount fixed by the judge or judges of the Court of Common Pleas. Such compensation after being so fixed shall be paid to such assistants, clerks and stenographers monthly from the general fund of the county treasury, upon the warrant of the county auditor."

The provisions of the General Code above quoted which were formerly found in Section 1271, Revised Statutes, have not been changed since the last amendment of said Section 1271, April 23, 1904, 97 O. L. 315. From the provisions of these sections of the General Code, it is clear that the county commissioners have nothing whatever to do with fixing the aggregate sum to be expended in any year for the compensation of assistants, clerks and stenographers of the prosecuting attorney's office, nor with the appointment and compensation of such persons.

Your question, however, is to be determined from a consideration of the appropriate provisions of House Bill No. 80, enacted by the last General Assembly as an act to provide for the method of budget procedure in the political subdivisions of the state, the levy of taxes to meet such budgets, and appropriations of money from the proceeds thereof by the taxing authority of the political subdivision which, in the case of the county, is the board of county commissioners. (112 O. L. 391). The provisions of said act which went into effect August 10, 1927, have been carried into the General Code as Sections 5625-1 to 5625-39 inclusive. Sections 5625-29 and 5625-30, General Code, read as follows:

Section 5625-29. "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 5625-30. "The total amount of appropriations from each fund shall not exceed the total of the estimated revenue available for expenditure therefrom as certified by the budget commission or in case of appeal by the Tax Commission of Ohio. No appropriation measure shall become effective until there be filed with the appropriating authority by the county auditor a certificate that the total appropriations from each fund taken together with

all other outstanding appropriations, do not exceed such official estimate, and if amended the last amended official estimate, and in every case in which the appropriation does not exceed such official estimate, the county auditor shall give such certificates forthwith upon receiving from the appropriating authority a certified copy of the appropriation measure. Appropriations shall be made from each fund only for the purposes for which such fund is established."

Section 5625-32, General Code, provides in part as follows:

"Any appropriation ordinance or other appropriation measure may be amended or supplemented from time to time, provided that such an amendment or supplement shall comply with all provisions of law governing the taxing authority in making an original appropriation, \* \* \*."

Section 5625-38, General Code, reads in part as follows:

"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 employes and their compensation have been determined prior thereto by resolution or ordinance or in the manner provided by law."

Section 5625-33, General Code, after providing that no subdivision or taxing unit shall make any appropriation of money except as provided in said act, provides further that no such subdivision or taxing unit shall:

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

Make any expenditure of money except by a proper warrant drawn against an appropriate fund which shall show upon its face the appropriation in pursuance of which such expenditure is made and the fund against which the warrant is drawn."

It follows from the provisions of the Budget Law above quoted that although the judge or judges of the Common Pleas Court of the county may have fixed an aggregate sum to be expended during the year for the compensation of assistants, clerks and stenographers of the prosecuting attorney's office pursuant to the authority granted by Section 2914, General Code, and the compensation of such persons may have been fixed by the prosecuting attorney as provided in Section 2915, General Code, such compensation cannot legally be paid out of the public funds of the county unless an appropriation therefor has been made by the county commissioners in the manner provided by Sections 5625-29, etc., General Code.

In an opinion of this department under date of December 8, 1927, Opinions of Attorney General 1927, Volume 4, page 2432, it was held, following former opinions of the department touching the question, that:

"Although the board of county commissioners has nothing to do with the question as to the number of deputies, assistants or clerks that may be appointed by the sheriff and other officers of the county for their respective offices, nor with the amount of compensation to be paid any deputy, assistant or clerk in said several offices, the board of county commissioners is charged with the duty, to be exercised in its sound discretion, of making appropriations to pay the compensation of deputies, assistants and clerks in such offices;

and the amount that may be expended by the sheriff or other county officers for deputies, assistants or clerk hire, may not in the aggregate exceed the appropriations made by the board of county commissioners for said purpose with respect to the said several county offices."

This department in an opinion under date of February 12, 1927, Opinions of Attorney General, 1927, Volume 1, page 104, had occasion to consider a question similar to that here presented with respect to an allowance made by the judge of the Common Pleas Court to the prosecuting attorney under the provisions of Section 3004-1, General Code. In said opinion it was held:

"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."

The question presented in the opinion of this department just referred to involved a consideration of the provisions of Sections 5649-3g, 5649-3h and 5660 General Code, which sections were repealed in the enactment of House Bill No. 80 and the pertinent provisions of which were substantially carried into said act and into the General Code as Sections 5625-29, 5625-32 and 5625-33 above quoted. The question presented in your communication was before the Court of Appeals of Noble County in the unreported case of *State of Ohio ex rel, Buckley, Prosecuting Attorney, vs. Board of County Commissioners and Tarlton, Auditor*, decided by that court November 17, 1926. This was an action in mandamus brought against the county commissioners and the county auditor of Noble County to compel them to allow and pay the salary of a clerk in the prosecuting attorney's office, notwithstanding the fact that the county commissioners had made no appropriation therefor. It appears in this case that the Common Pleas Judge of Noble County acting under the authority of Section 2914 of the General Code, fixed an aggregate of \$600 to be spent during the year 1926 for the compensation of assistants, clerks and stenographers in the office of the prosecuting attorney. The county commissioners only appropriated the sum of \$300 for this purpose. The clerk appointed by the prosecuting attorney under Section 2915, General Code, drew \$50 per month for the first six months and thereby exhausted the appropriation made by the county commissioners. The action was one against the county commissioners and the auditor to compel them to provide an additional \$300 for the last six months' salary. The court on a consideration of the then provisions of Sections 5649-3g and 5560, General Code, held that mandamus would not lie and that the commissioners and auditor could not be required to provide for and pay the additional \$300 demanded.

By way of specific answer to your question stated in your communication, I am of the opinion that it is not the mandatory duty of the county commissioners to appropriate for the compensation of assistants, clerks and stenographers of the prosecuting attorney an amount of money equal to the aggregate sum allowed for said purpose by the judge of the Common Pleas Court, but they can appropriate such smaller amount of money as they may see fit and no money can be paid out for the compensation of such persons in excess of the amount appropriated by the county commissioners for said purpose.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*