

7255

PROSECUTING ATTORNEY — AUTOMOBILE — CANNOT PURCHASE FOR USE OF OFFICE WITH FUNDS PROVIDED UNDER SECTION 3004 G. C.

SYLLABUS:

A prosecuting attorney cannot purchase an automobile for the use of his office with funds provided him under the provisions of Section 3004 of the General Code of Ohio.

Columbus, Ohio December 15, 1944

Hon. Joel S. Rhinefort, Prosecuting Attorney
Toledo, Ohio

Dear Sir:

Your request for my opinion is at hand. This request reads as follows:

“Your predecessors have several times ruled that a prosecuting attorney may, when he deems it necessary, hire an automobile and pay for said hire out of the fund set up under General Code Section 3004.

May I have your opinion as to whether a prosecuting attorney may out of such fund purchase an automobile outright for necessary purposes in the conduct of his office.”

Your question embraces the interpretation of Section 3004 of the General Code of Ohio, which section reads in part as follows:

“There shall be allowed annually to the prosecuting attorney in addition to his salary and to the allowances provided by section 2914, an amount equal to one-half the official salary, *to provide for expenses* which may be incurred by him in the performance of his official duties and in the furtherance of justice, not otherwise provided for. Upon the order of the prosecuting attorney the county auditor shall draw his warrant on the county treasurer payable to the prosecuting attorney or such other person as the order designates, for such amount as the order requires, not exceeding the amount provided for herein, and to be paid out of the general fund of the county.”

(Emphasis added.)

It will be noted that this section uses the language “for expenses”, which in itself would indicate that the purpose for which this money is granted is for those things of an expendable nature that require funds either by way of personal expense of the prosecuting attorney or for the hiring of other persons such as investigators, various experts in criminal matters, etc. Nothing can be drawn from the language of this section which would indicate that the Legislature intended tangible personal property, such as machinery, to be purchased from these funds. This line of argument can further be justified in view of the fact that in the smaller counties the allowance granted the prosecuting attorney under this section would be entirely inadequate to make purchase of such expensive equip-

ment as an automobile.

I am unable to discover authority for the purchase of any equipment from this fund other than the opinion of one of my predecessors, found in Opinions of Attorney General, 1920, p. 977 in which opinion the then Attorney General held that a prosecuting attorney could purchase scales to be used in obtaining evidence on overweight trucks, and similar matters. However, in that opinion the Attorney General suggested that his opinion as rendered was open to much doubt and question, but in the absence of a judicial determination on the point he felt that to rule against such purchase would have the effect of depriving the prosecuting attorney of a piece of equipment necessary to him in the enforcement of the law. He went on further to say that this was not an all inclusive conclusion but only applied in such cases where there were no other scales available to the prosecuting attorney for such purposes.

The question of the purchase of an automobile does not come, by analogy within this opinion. There are other means of transportation and there are persons other than the personnel of the prosecutor's office to obtain information and to travel for and in behalf of the prosecutor's office.

The only specific authority in the statutes allowing the purchase of a motor vehicle by or for any officer of the county is found in Section 2412-1, General Code, which reads as follows:

“That, whenever the board of county commissioners, deems it necessary to purchase a motor vehicle or vehicles for the use of the sheriff or sanitary engineer, their deputies or necessary employes they shall adopt a resolution setting forth the necessity for such purchase, together with a statement of the kind and number of vehicles required and the estimated cost of each such vehicle.

Upon the adoption of said resolution the board of county commissioners may purchase said vehicles for the use and purposes of the aforesaid persons or any of them. If the board of county commissioners deem it necessary to purchase a motor vehicle or vehicles for their use or for the use of any department under their direct control, application shall be made by them to a judge of the court of common pleas of said county, who, if upon the hearing thereof finds it necessary and expedient to purchase such vehicle or vehicles shall so order, fixing the number and kind of such vehicles, and the amount to be expended for each.”

You will note from the language employed in this section that the Legislature was very cautious in permitting motor vehicles to be purchased by the county, and in the case of a car for the use of the board of county commissioners or any department under their direct control, the Legislature required by this section that the commissioners make application to the judge of the common pleas court, who determines the necessity of such expenditure and fixes the number and kind of such vehicles and the amount to be expended for each.

There is no authority under this section for the purchase of an automobile by the county for the use of the prosecuting attorney, since that department is not under direction or control of the board of county commissioners.

The courts in interpreting authority to purchase motor vehicles have been inclined to strictly construe such authority. In the case of *State ex rel Locher, Prosecuting Attorney, v. Menning, et al.*, 95 O. S. 97, the Supreme Court of Ohio held that the county commissioners were not authorized to purchase a passenger automobile for official use in supervising, constructing, improving or maintaining county highways, and that such automobile is "not included within the term "machinery or other equipment", as set forth in Section 157 of the Cass road law.

Throughout the history of Ohio the courts have held that statutes authorizing the expenditure of public funds should receive strict construction, and in the *Menning* case, *supra*, the court said at page 99:

"* * * The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county."

Likewise, in the case of *State ex rel. Smith v. Maharry*, 97 O. S. 272, the court held:

"All public property and public moneys, whether in the custody of public officers or otherwise, constitute a public trust fund, and all persons, public or private, are charged by law with the knowledge of that fact. *Said trust fund can be disbursed only by clear authority of law.*"

(Emphasis added.)

In the case of State ex rel. Bently & Sons v. Pierce, Auditor, 96 O. S. 44, the court in considering a grant of power said:

“In construing such grant of power, particularly administrative power through and by a legislative body, the rules are well settled that the intention of the grant of power, as well as the extent of the grant, must be clear; that in case of doubt that doubt is to be resolved not in favor of the grant but against it. * * *”

In view of the foregoing, and specifically answering your question, it is my opinion that a prosecuting attorney cannot purchase an automobile for the use of his office with funds provided him under the provisions of Section 3004 of the General Code.

Respectfully,

THOMAS J. HERBERT

Attorney General