

The language of the statute, Section 10072, General Code, is that the commissioners shall pay "not less than twenty-five dollars" toward the salary of the humane agent. It would therefore, appear that there is a mandatory duty on the board of county commissioners to appropriate not less than such sum of money for such salary.

While you do not specifically so state in your inquiry, I assume that the item referred to in the resolution as "the \$300.00 appropriation" is for the payment of the minimum of \$25.00 per month to the humane agent.

I do not hold that the board of county commissioners cannot rescind a resolution enacted by them, when at the time of the original adoption of the resolution they might legally have adopted such resolution or refrained from the adoption of such resolution as they deemed expedient, providing property rights have not become vested in reliance thereon; yet since there is a mandatory duty upon the county commissioners to appropriate and cause to be paid to a county humane agent the sum of not less than \$25.00 per month; and, in performance of such legal duty appropriations were made, I am unable to come to the conclusion that the board of county commissioners can now rescind an act which they had no legal right to refrain from performing in the first instance.

Specifically answering your inquiries it is my opinion that:

1. When the board of county commissioners in compliance with the requirements of Section 10072, General Code, has made an appropriation of an amount of money sufficient to pay to the county humane agent as salary the minimum amount permitted by the provisions of such section, the county commissioners thereafter, have no authority to rescind the resolution making such appropriation.

2. The adoption of a resolution by a board of county commissioners purporting to rescind, annul and vacate an appropriation of an item for which they were required by statute to appropriate the specific sum appropriated is a nullity, and such resolution, so adopted, is of no effect.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

862.

COUNTY RELIEF BOARD—COUNTY COMMISSIONERS UNAUTHORIZED TO PAY EXPENSES THEREOF FROM PUBLIC FUNDS—UNEMPLOYMENT RELIEF.

*SYLLABUS:*

*When there is formed in a county a board known as a county relief board which has as its purpose the investigation and preparation of a list of unemployed persons within a county and the furnishing of such list to contractors on public, state or county projects, the board of county commissioners of such county has no authority to pay the expenses of such board and no authority to compensate the members and employes of such board from public funds, for their time and efforts in such service.*

COLUMBUS, OHIO, May 23, 1933.

HON. NORTON C. ROSENSTRETER, *Prosecuting Attorney, Port Clinton, Ohio.*

DEAR SIR:—Your recent request for opinion reads:

"For some time this county has had a county relief board, the members of which serve without any compensation whatsoever. It has been one of the functions of this board to provide contractors on public, state and county projects with names of unemployed, as it has usually been a condition of such a contract that at least 60% of the labor employed on the project would be local.

At the present time a joint state and county bridge is being constructed in this county under such an employment arrangement. However, it has become quite a task for the relief board to function efficiently in the picking of unemployed for the needs of the contractor and as the members of the board are serving without compensation and have no money to expend in the administration of this function, they have recently inquired whether or not the board of commissioners of the county could make an appropriation meeting the need, in salary and other expenditures to provide for a hired investigator whose duty it will be to make investigation of the individual needs of the applicant for a job on such project.

The board of commissioners have signified that they are willing to make such an appropriation if it can legally be done."

I have made an examination of the provisions of the General Code of Ohio but have failed to find any statute either creating or establishing a county relief board, or defining its duties. In your inquiry you state that one of the functions performed by the board is to provide contractors who have public contracts conditioned that at least sixty percent of the labor employed in the performance of the contract would be local, with a list of names of unemployed persons. I am unable to find any provision of the statutes placing the duty of compiling a list of the unemployed within a county for such purpose.

There is a well established rule of law that the board of county commissioners is an agency or instrumentality of the government, and as such, has those powers, and those only, that are placed upon it by statute. *Peter vs. Parkinson*, Treas. 83 O.S. 36, 49; *Jones, Auditor vs. Commissioners of Lucas County*, 57 O.S. 189, Such rule is well stated by Matthias, J. in *Elder vs. Smith, Auditor*, 103 O.S. 369, 370:

"It has long been settled in this state that the board of county commissioners has such powers and jurisdiction, and only such as are conferred by statute."

It would therefore appear that the county commissioners have no statutory obligation to perform the duties which are being performed by the "county relief board" referred to in your inquiry. If that be true, it is difficult to perceive a method by which they could employ an agent for compensation to do something which they had no authority to do, and pay him from public funds.

While the end sought to be accomplished by the creation of the county relief board is undoubtedly laudable, it is apparently beyond the powers of the board of county commissioners to create such agency. I must therefore hold that the board of county commissioners has no power to employ such board.

Specifically answering your inquiry it is my opinion that when there is formed in a county a board known as a county relief board which has as its purpose the investigation and preparation of a list of unemployed persons within a county

and the furnishing of such list to contractors on public, state or county projects, the board of county commissioners of such county has no authority to pay the expenses of such board and no authority to compensate the members of such board or its employes from public funds for their time and efforts in such service.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

863.

APPROVAL, CORRECTED ABSTRACT OF TITLE TO LAND IN JEFFERSON AND GREEN TOWNSHIPS, ADAMS COUNTY, OHIO—KATE McMAHON.

COLUMBUS, OHIO, May 23, 1933.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication enclosing warranty deed and other files relating to the purchase of four certain tracts of land situated in Jefferson and Green Townships, Adams County, Ohio, and now standing of record in the name of Kate McMahan. In Opinion No. 4745 of my immediate predecessor in office directed to you under date of November 17, 1932, it was found that Kate McMahan had a good merchantable title to the tracts of land here in question, subject to the lien of certain delinquent taxes as well as to those for the year 1932. Since the former opinion was rendered on this title, all delinquent taxes, as well as the taxes for the year 1932, have been paid.

Following the previous opinion of this office above referred to upon the corrected abstract of title then submitted, I find that Kate McMahan has a good merchantable title to the property here under consideration, subject to the lien of the taxes for the year 1933. Inasmuch as the agreement for the purchase of this property was consummated long prior to the time that the lien of the taxes for the year 1933 attached, you should experience little difficulty in getting this property upon the exempt list with respect to such taxes.

In this connection, it may be observed that, inasmuch as the last certification to this abstract of title is under date of October 29, 1932, common prudence would suggest that before the transaction for the purchase of this property is closed by the issue of voucher and warrant covering the purchase price of the property, an investigation should be made to determine whether or not any mortgages, judgments or other liens have been placed on the property since the date of the certification of the abstract.

The warranty deed tendered by Kate McMahan has been properly executed by her and the form of said deed is such that it is legally sufficient to convey this property to the State of Ohio by fee simple title with a covenant of warranty that the same is free and clear of all encumbrances whatsoever.

Contract encumbrance record No. 806, submitted as a part of the files relating to the purchase of the property has been properly executed and the same shows that at the date of the execution of such instrument there was a sufficient