

may be better accommodated, it would seem a narrow and technical construction in view of the language hereinbefore referred to, to hold that the same could not be used for the purpose of repaving an alley dedicated to public use in those instances wherein the judgment of the municipal authorities is to the effect that such action will be a benefit to the public.

It is my opinion that a common sense construction of the language of the sections hereinbefore referred to, impels the conclusion that in all of the instances which you mention, the portion of the taxes available for the repaving of public streets and roads may be used for the purpose of repaving an alley dedicated to public use.

Respectfully,

GILBERT BETTMAN,

Attorney General.

2082.

**PUBLIC OFFICERS—MUNICIPALITY—WHEN TRAVELING EXPENSES FOR ATTENDANCE AT CONVENTIONS AND FOR INVESTIGATING PURPOSES PAYABLE FROM TREASURY.**

**SYLLABUS.**

1. *The payment from city funds, of the traveling expenses of a recreation director employed by a city recreation board when attending a convention of recreation officials for mere purposes of general education or the acquiring of general ideas pertaining to the duties of his position is unauthorized. If, however, the attendance upon such convention is authorized by resolution of the city recreation board which in the exercise of a sound discretion finds it necessary to send its recreation director on a trip in furtherance of a definite, presently contemplated undertaking for the benefit of the municipality the city may lawfully pay the necessary traveling expenses of such recreation director. Fourth branch of syllabus of Opinion No. 1327, dated December 3, 1929, modified in conformity herewith.*

2. *The traveling expenses of a salaried police officer, incurred in investigating finger print systems, may or may not lawfully be paid from city funds, depending on whether or not such investigation is merely for the purpose of acquiring general information with respect to finger print systems, or whether it is for the purpose of determining the actual working of a system, with a view to its installation in the city department which the police officer serves.*

3. *The traveling expenses of municipal officers or employes, incurred in attending conventions of like municipal officers and employes can not be legally paid from public funds, even though authorized by the taxing authority of a municipal corporation, unless the attendance upon such convention is for the purpose of acquiring information relative to and necessary for the furtherance of a definite, presently contemplated undertaking for the benefit of the municipality in the performance of a duty enjoined by law.*

COLUMBUS, OHIO, July 11, 1930.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“The fourth branch of the syllabus of Opinion No. 1327, dated December 23, 1929, reads:

‘If a recreation board in the exercise of a sound discretion finds it neces-

sary for its recreation director to attend a convention, it may lawfully allow him his expenses in so doing.'

We are enclosing herewith copy of instructions to State Examiners in relation to the payment of expenses of municipal officers and employes, premised on opinions of various attorneys general, which are referred to in the instructions.

Question 1. May the traveling expenses of a recreation director employed by a city recreation board, be legally paid from city funds which have been appropriated for such purpose; such expenses being incurred in attendance at a convention of recreation officials and authorized by a resolution of the city recreation board?

Question 2. May the traveling expenses of a salaried police officer incurred in investigating finger print systems be legally paid from city funds when authorized by a director of public safety?

Question 3. May the traveling expenses of municipal officers and employes incurred in attending conventions of like municipal officers and employes, be legally paid from public funds when authorized by the taxing authority of a municipal corporation?"

Accompanying your letter is a copy of instructions which you have sent to all state examiners, with reference to the question of the payment of expenses of public officers and employes. With these instructions attention is directed to a number of opinions of former attorneys general and the decision of the Supreme Court in the case of *Richardson vs. State*, 66 O. S., 108. In the light of these opinions and the decision of the Supreme Court in the case referred to, you conclude your instructions as follows:

"In view of the foregoing court decision and opinions of the Attorney General it is the duty of the Bureau to make findings for recovery against all officers and employes receiving their traveling expenses from the public treasury, unless such payment is authorized by statute or charter or was necessary in connection with some definite undertaking, such as the purchase of machinery, etc."

Among other opinions referred to by you are Opinions of the Attorney General for 1919 at pages 143 and 343. In the first of these opinions it is held by the Attorney General that the public funds of a non-charter city can not be used in paying the expenses of a municipal officer in attending a meeting of mayors and city solicitors held for the purpose of considering and drafting legislation for the relief of municipalities, nor could the funds of a charter city be so used in the absence of a provision in its charter warranting such payment. In the second opinion referred to above, it is held:

"The expenses of municipal officers incurred in attending a conference of governors and mayors held at Washington, D. C., in March, 1919, which conference was called by the U. S. Department of Labor for the purpose of discussing questions and subjects affecting the general industrial situation, cannot be paid from the public funds."

In this opinion a number of former opinions were referred to, as was also the case of *State vs. Wright*, 17 C. C. (N. S.) 396, the headnote of which reads:

"A municipality is not liable for the traveling expenses of one of its officials incurred in attending a convention of like officials of other municipalities."

In each of the opinions referred to above, the distinction is drawn between expenditures incurred by a public officer when on a mission for his political subdivision, which has to do with some definite and specific project then being carried out, and trips that may be taken with no other object in view than the mere acquiring of general information with regard to the duties of his office or position. This distinction is grounded on the fact that when public officers are elected or appointed or public employes employed it must be conclusively presumed that they are qualified for the position which they are to occupy, and, as stated by a former Attorney General:

"To say that the municipality is justified in expending its money for the purpose of permitting its employes and officers to acquire information of this sort, is to say that the public money may be expended for the education of public servants. This, it seems to me, is fallacious and the power to make such an expenditure must be denied. Putting it in another way, the possible good that might result to the department and to the municipality from the acquisition of such general information, is too remote and indefinite upon which to found a public expenditure; \* \* \* From still another viewpoint, officers are required to qualify and to continue to be qualified, and employes, likewise are presumed to be cognizant of the matters within the scope of their employment." Annual Report of the Attorney General for 1910 and 1911, page 942.

And again, the same Attorney General in an opinion found in the Annual Report of the Attorney General for 1912 at page 432, said:

"The acquirement of a knowledge of the general affairs and detailed workings of his office is a responsibility resting upon the officer himself, not upon the city; and the possession of requisite skill and information is to be presumed."

This principle was referred to by the court in the case of *State vs. Wright*, supra, where there was under consideration the payment of the traveling expenses of the building inspector of a municipality in attending a convention of like officials where it did not appear that it was done in pursuance of any definite contemplated undertaking. The court said:

"He was presumably appointed to his present position because of his fitness by experience and education to discharge the duties of the place, and the salary paid him is presumably adapted to secure the degree of efficiency in these respects which the city desires that its building inspector shall possess. If a person relatively uneducated, inexperienced and inefficient in the discharge of the duties of the position of building inspector were appointed at a salary proportioned to his fitness, it might as well be argued that his deficiencies may thereafter be supplemented at the charge of the municipality which he serves by directing him to attend an architectural school and to render his bills for board and tuition to the city. The salary attached to the office of building inspector is presumed to be sufficient to enable him to maintain his professional or official efficiency at proper standard."

In all the aforesaid opinions as well as in the case of *State vs. Wright*, the distinction is drawn between expenses incurred by an official in attending conventions where there may be acquired general information only with reference to the duties of an office or of public problems generally, and where those expenses are incurred in acquiring information about or in furtherance of definite contemplated public projects.

This distinction is well stated by the Attorney General in the opinion above referred to, found in the Annual Report of the Attorney General for 1912, at page 433. In that opinion the Attorney General had under consideration questions relating to the allowance of traveling expenses for the director of public safety, chief of the fire department and superintendent of the waterworks in a municipality in attending a fire chiefs' convention held in Denver, Colorado, and also questions relating to the payment of traveling expenses for the health officer and a physician of the health department in attending a meeting of the American Public Health Association and the International Congress on Hygiene and Demography, held in Washington, D. C. The Attorney General, after stating the rule above referred to, to the effect that public officials were not entitled to reimbursement for expenses in attending conventions or making trips merely for the acquisition of general knowledge with reference to their positions, stated:

"The statement of your question with reference to the other officials, however, calls for a distinction. For as regards the necessary visits to other localities for the immediate purpose of acquiring information with reference to a *definite presently contemplated undertaking*, such as the purchase of machinery, the decisions permit of a modified application of the above rules, holding that such visits may be regarded as of sufficient necessity to the performance of a fixed duty to justify an allowance of the cost so incurred as an expense incurred for the *benefit of the municipality in the performance of a duty enjoined by law.*"

The conclusions of the Attorney General in this aforesaid opinion, on the facts submitted to him, are stated in the syllabus of the opinion, which reads as follows:

"(1) The director of public safety, the chief of the fire department, the general superintendent of the water works department, the health officer and the physician of the health department, may not be allowed their expenses incurred in attending conventions for the mere purposes of general education.

(2) The director of public safety and the chief of the fire department may be reimbursed for expenses incurred in attending fire chiefs' conventions, providing such a visit is the most economical and efficient method of promoting a purchase, held in immediate contemplation by the department of public safety.

(3) The superintendent of the water works department, under like conditions, with reference to purchases of the water works department, may be reimbursed for expenses to such conventions, incurred in a visit authorized by the director of public service."

The distinctions referred to by the Attorney General in the opinions above cited are preserved in your instructions to your examiners. It should be noted, however, that the circumstances under which traveling expenses may be paid for a public official or employe, to-wit: when incurred with reference to a definite, presently contemplated undertaking are not confined merely to cases where the purchase of machinery or supplies is contemplated, but extends as well to any definite contemplated undertaking. This fact makes the rule extremely difficult of practical application. The difficulty in distinguishing between those cases where an official is on a mission, or in quest of information which may be gathered directly to some definite, presently contemplated project or undertaking, or merely gathering general information, is that it requires consideration of a distinction, which, though not without a difference, is one involving, in many cases, such a slight difference as to render it dangerous to predicate a legal

conclusion thereon, based on any general rule. Each case requires separate consideration, as in each instance there are involved questions of fact upon which the determination turns.

An examination of the court decisions dealing with this subject indicates that while the courts have jealously guarded public funds, and have at all times held against the right to expend those funds for traveling expenses for public officials who travel on what appear to be junketing trips, or mere pleasure trips attending conventions and the like under the guise of working in the public interest to the extent of acquiring general information valuable perhaps, to some extent, in the performance of public duties, the courts have never, by general rule, stated that a public official is not entitled to be reimbursed for expenses actually incurred in the honest prosecution of the public business unless the payment of such expenses is specifically precluded by statute or charter provision. It is frequently provided in municipal charters that no traveling expenses may be allowed to public officials and of course, where such a provision is made, no allowance can lawfully be made for such expenses, and where the charter or statute fixes the extent of the expenses that may be allowed, no further allowance can lawfully be made. Such was the situation in the case of *Richardson vs. State*, 66 O. S., 108, where at page 111 it is said:

“To make such expenses an additional burden on the public funds would require a plain and unequivocal provision of the statute. An intention to do so will not be inferred.”

The above statement of the court is quoted in your instructions to your examiners. This statement, standing alone, is misleading. Without an explanation of the word “such” in the first line of the above quotation it might be inferred that no expenses of a public officer could under any circumstances be allowed unless the allowance be authorized in plain and unequivocal provision of the statute. As a matter of fact, the circumstances which called forth the statement of the court were the very opposite. That is, the expenses referred to could not be allowed for the reason that the statute provided indirectly, at least, that such expenses should not be allowed. The circumstances were that the statute made an allowance for a county commissioner, by way of mileage, when in the prosecution of certain specified work for his county. The commissioners undertook to charge in addition to this mileage, the cost of his personal expenses and expenses for horse feed, horse shoeing, etc. The court held that inasmuch as the statute fixed the amount to be allowed to the sheriff for expenses he could get no more.

Courts and text writers are agreed that where by statute or charter the payment of the incidental expenses of a public officer or employe in performing the duties of his office or employment is prohibited or limited, no such expenses can lawfully be paid beyond the limitation. Where, however, no provision whatever is made by charter or statute for the payment of such expenses, the legitimate necessary expenses incurred by a public officer or employe in the performance of the duties of his office or employment may lawfully be paid to him. The difficult question in each case is to determine the questions of fact involved, that is, whether or not the incurring of the expenses was necessary, and in furtherance of the public interest. In solving this question it is impossible to apply precise mathematical rules. In many cases the question turns on the lawful discretion of public officers, which, in the absence of facts showing the contrary, must be presumed to have been reasonably and lawfully exercised. It is the universal rule that discretion reposed in a public officer will not be interfered with by the courts in the absence of an abuse thereof.

One rule of very general application is that no expenses may be allowed to a public officer when it appears that he is on a junketing expedition or in the quest of information for personal and private purposes under the guise of performing public duties.

From this there has been evolved the rule that public officers on trips in quest of general information pertaining to the duties of their office, and not with respect to a definite contemplated undertaking or course of action, can not lawfully be reimbursed for their personal expenses incurred on the trip.

Mr. McQuillin, in his recently revised work on municipal corporations, Second Edition, Section 541, says, with reference to this subject, in its application to municipal officers:

“This subject is controlled by legal provisions and to a limited extent by custom and usage. Usually the municipal corporation is liable to officers for legitimate expenses made in connection with their official duties and such sums may be recovered of the city. That is, when the officer is required in the performance of his official duties to incur expenses without fault or neglect in his part, he may be reimbursed. The true test in all such cases is, did the act done by the officer relate to a matter in which the local corporation had an interest, or affect municipal rights or property, or the rights or property of the citizens which the officer has an official obligation to protect or defend. No expenditure can be allowed legally except in a clear case where it appears that the welfare of the community and its inhabitants is involved and direct benefit results to the public.

After naming the annual salary of a councilman a charter reciting that ‘no sum shall be paid from the city treasury for or on account of any personal expenses directly or indirectly incurred by or in behalf of any member of said council,’ was held to preclude the payment of expenses of councilmen in making trips to other cities for the purpose of investigating hospitals to determine the advisability of establishing in or near their own city a hospital for chronic diseases.”

There are cited by the author, in support of the text, many cases, but none from Ohio.

In support of the last paragraph of the above quotation there is cited the case of *McCaffery vs. Boston*, 149 N. E., 659. The holding in this case implies that if the charter provision mentioned had not been in existence the expenses spoken of might lawfully have been allowed.

In Abbott's *Municipal Corporations*, Section 697, it is said:

“A public official in performing the duties of his office may incur miscellaneous expenses which are a proper charge upon public funds and this is especially true where the expense was one incurred in the performance of a duty in which the public corporation has a direct and beneficial interest or one which rests upon it as a duty or as an agency of the sovereign.”

The following quotation from 23 *American and English Encyclopaedia of Law*, Second Edition, page 389, is pertinent:

“Where the law requires an officer to do what necessitates an expenditure of money for which no provision is made he may pay therefor and have the amount allowed him.”

Also the following from Throop on *Public Offices*, Section 495:

“A public officer is entitled to receive from the public authority which he represents, reimbursement for extraordinary expenses necessarily incurred by him, in the course of, or in consequences of the discharge of his official

duties, and not intended to be covered by the compensation allowed to him, the rule in this respect being the same as in cases of private agency."

The question of reimbursement of public officers for expenditures made in connection with their official duties has frequently been under consideration by this office, and has been the subject of a large number of opinions. In these several opinions there is applied the principle supported by the courts and text writers, that a public officer or employe is entitled to be reimbursed for his actual expenses incurred when in the performance of his public duties unless such reimbursement is prohibited or limited by charter or statute and if so limited he is only entitled to reimbursement within the limitation. The incurring of the expenses, however, should be in furtherance of a public duty which is reasonably necessary, in view of the facts and circumstances, for the public good.

Attention is directed to two recent opinions of this office, which illustrate the principles involved as well as the fact that in each instance there are involved questions of fact which preclude the laying down of any definite, precise, categorical rule which can be applied with mathematical precision.

In Opinion No. 1747, rendered under date of April 8, 1930, it was held as disclosed in the syllabus:

"A board of education may legally pay personal traveling expenses of its clerk when under the direction of said board he travels to Columbus to confer with the Department of Education with reference to the state equalization fund, when such mission is reasonably necessary in view of the facts and circumstances."

In a later opinion No. 1916, under date of May 28, 1930, it is said in the syllabus:

"Whether or not the expenses of county commissioners, their clerks and the county auditor, made on a trip outside of the state for the purpose of signing a large issue of bonds by the use of a signature machine, and the rental of such machine, may properly be paid from the county treasury is a question of fact to be determined from all of the circumstances."

In Opinion No. 1327, dated December 23, 1929, referred to by you in your letter of inquiry, which opinion is published in the Reported Opinions of the Attorney General for 1929, at page 1975, it was held in the fourth branch of the syllabus, which is quoted by you, that a recreation board might in the exercise of a sound discretion, reimburse its recreation director for necessary expenses in attendance upon a convention. This conclusion was reached in the light of the particular facts submitted and probably as a positive statement of law, is too broad.

It is also probable that the facts upon which the conclusions were based are not fully and definitely set out in the opinion. The facts were such that it could reasonably be concluded, and was so concluded in the absence of anything appearing to the contrary, that the recreation director was being sent by the recreation board in furtherance of a definitely contemplated course of action rather than merely to attend a convention of recreation directors where general ideas pertaining to the subject of recreation activities were discussed and the aforesaid syllabus should be modified to conform to those facts.

In view of the principles hereinbefore discussed, I am of the opinion, in specific answer to your questions:

1. The payment from city funds of the traveling expenses of a recreation director employed by a city recreation board when attending a convention of recreation officials

for mere purposes of general education or the acquiring of general ideas pertaining to the duties of his position is unauthorized. If, however, the attendance upon such convention is authorized by resolution of the city recreation board which in the exercise of a sound discretion finds it necessary to send its recreation director on a trip in furtherance of a definite presently contemplated undertaking for the benefit of the municipality the city may lawfully pay the necessary traveling expenses of such recreation director.

2. The traveling expenses of a salaried police officer incurred in investigating finger print systems may or may not lawfully be paid from city funds, depending on whether or not such investigation is merely for the purpose of acquiring general information with respect to finger print systems or whether it is for the purpose of determining the actual working of a system with a view to its installation in the city department which the police officer serves.

In the 1912 Opinion of the Attorney General, cited above, the Attorney General refers to the case of *Mogel vs. Burk's County*, 154 Penna. State, 14. In that case it appeared that the state prison inspectors were contemplating the installation of a new system of identification and a certain number of them made the trip outside of the county to determine the actual working of the system. There was no provision of law for the payment of such expenses, and yet the court held:

"The authority to examine and investigate, so far as may be necessary to form an intelligent judgment upon the utility and value of the machine they were authorized to buy and the system they were authorized to adopt, is incidental to the power conferred."

3. The traveling expenses of municipal officers or employes incurred in attending conventions of like municipal officers and employes can not be legally paid from public funds even though authorized by the taxing authority of a municipal corporation unless the attendance upon such convention was for the purpose of acquiring information relative to and necessary for the furtherance of a definite, presently contemplated undertaking for the benefit of the municipality in the performance of a duty enjoined by law.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

2083.

APPROVAL, TRANSCRIPT OF PROCEEDINGS TO SALE OF OHIO CANAL  
LANDS IN WAYNE TOWNSHIP, PICKAWAY COUNTY, OHIO, TO PENN-  
SYLVANIA, OHIO AND DETROIT RAILROAD COMPANY.

COLUMBUS, OHIO, July 11, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a transcript of your proceedings as Superintendent of Public Works relating to the sale of a certain parcel of abandoned Ohio canal lands in Wayne Township, Pickaway County, Ohio, to The Pennsylvania, Ohio and Detroit Railroad Company. Said parcel of land is more particularly described as follows:

Being a strip of land 120 feet wide extending across the Ohio Canal  
land in Wayne Township, Pickaway County, Ohio, described in detail as