

the appropriation "Prosecution and Transportation of Convicts" of any claims filed by virtue of section 13755 of the General Code.

Respectfully,
EDWARD C. TURNER.
Attorney General.

156.

TRUSTEES OF COUNTY CHILDREN'S HOME—MUST FIX SALARY OF SUPERINTENDENT AND MATRON TO CONFORM TO APPROPRIATION OF COUNTY COMMISSIONERS.

SYLLABUS:

1. *The aggregate amount of compensation that can be paid to any public official or employee, for and during any fiscal year, is limited by the amount appropriated therefor.*

2. *When an appropriation is made by county commissioners for the yearly compensation of the superintendent and matron of a county children's home which is of a lesser amount than their salaries have theretofore been fixed, it becomes the duty of the trustees of the home to fix the salaries to conform to the appropriation.*

COLUMBUS, OHIO, March 8, 1927.

HON. CLARENCE J. CROSSLAND, *Prosecuting Attorney, Zanesville, Ohio.*

DEAR SIR:—I am in receipt of your communication of recent date, reading as follows:

"I herewith submit to you the following statement of facts for your opinion as to what may be done relative to a legal solution thereof.

At the beginning of the year 1926, the Superintendent of the Muskingum County Children's Home was being employed at an annual salary of \$1800. The matron of said home was then being employed at an annual salary of \$864.

The Muskingum County Commissioners in their appropriations for 1926 allowed for salary for said superintendent and matron a total of \$2100.

For the first three months of 1926 the superintendent drew a total of \$450 and the matron drew a total of \$216. Effective April 1, 1926, the Board of Trustees of said home passed a resolution conformable to said appropriation, fixing the salary of superintendent at \$750 for the ensuing nine months, or 83.33⅓ monthly, and of matron at \$684 or \$76 monthly. Neither said superintendent nor said matron drew any further salary, although continuing in their respective capacities.

No action was at any time taken by said Board of Trustees for reduction in pay of said superintendent or matron pursuant to General Code Section 486-17 et seq. At the end of 1926, there was an unincumbered balance in said Children's Home fund for salary of said superintendent and matron of \$1434. There was a further unincumbered balance in other items of said fund of \$2172.71.

In the 1927 appropriations this total unincumbered balance of \$3606.71 was reappropriated to the said Children's Home fund. In the item for

salary of superintendent and matron the appropriation of said county commissioners for said fund for 1927 is for \$4662. A resolution and requisition of the trustees of said home requests \$2664 for salary for superintendent and matron for 1927 at \$1800 and \$864 respectively, and \$1998 for 1926 for the difference between salaries of superintendent and matron theretofore fixed at \$2664 in the aggregate, and the amount drawn by said superintendent and matron, to-wit, \$666.

1. Can the County Auditor honor a requisition pursuant to said 1927 appropriation for the payment of the balance of said salaries for 1926, to-wit, \$1998?

2. If not can the county commissioners reappropriate for said home for 1927 for salary of superintendent and matron for 1927 only, leaving in the unincumbered balance for salary for 1926 the amount of salary previously appropriated by acceptance of which was refused, to-wit, \$434?

If so, can the County Auditor honor a present requisition of the Board of Trustees of said home for payment of this unincumbered balance of 1926 salary?

3. Can the county commissioners transfer from other items of said 1926 appropriation for said Children's Home \$564 of said otherwise unincumbered balance of \$2172.71, to the item of salary for superintendent and matron, thus making available in said item of salary a total of \$1998 for 1926 and leave this amount of \$1998 as an unincumbered balance for 1926 unappropriated to any new use for the year 1927?

If so, can the county auditor honor a present requisition on such appropriation of \$1998 for 1926, so as to permit the payment in full to said superintendent and matron of the balance of their respective salaries as fixed and effective January 1, 1926?

If neither the first or third propositions are answered in the affirmative, what recourse, if any, is left open to any one for means or method of effecting payment or collection of said sum of \$1998, claimed by said superintendent and matron as balance of salary due for 1926, and desired by such board of trustees of said Children's Home and said Muskingum county commissioners to be paid?"

Children's homes, such as the Muskingum County Children's Home, are established and governed under and by virtue of the provisions of Sections 3077, et seq., of the General Code of Ohio, which provide in substance that county commissioners may establish such homes and, when established, they shall appoint a board of trustees for the same, who shall have general supervision of the home, appoint a superintendent and fix his salary. The superintendent so appointed shall appoint, with the approval of the trustees a matron, assistant matron and such other employees as may be needed. The trustees shall fix the compensation of the matron and other employees.

Section 3104 of the General Code provides as follows:

"The board of trustees shall report annually to the commissioners of the county the condition of the home, and make out and deliver to the commissioners a carefully prepared estimate, in writing, of the wants of the home for the succeeding year. Such estimate shall specify separately the amounts required for each of the following purposes, to-wit: First maintenance. Second repairs. Third special improvements."

Section 3105 of the General Code provides, as follows:

"At their regular quarterly meeting at which such estimate is presented to them, the commissioners shall carefully examine the estimate, and if, in their judgment, it is reasonable and ratable within the assessment for the support of the home for the current year, or so much thereof as they deem reasonable and within such assessment, the board of commissioners shall allow and approve, and shall appropriate and set apart such amount for the use of the home. Upon the order of the trustees of the home, the county auditor shall draw his warrant upon the county treasurer, who shall pay such warrant from the fund so appropriated and set apart."

Section 3106 of the General Code provides as follows:

"The trustees shall contract no debts and make no purchase in excess of the amount so appropriated. No member of the board of trustees of a children's home shall sell or supply any article for the maintenance of the home or be interested in any contract made by the board."

Section 5649-3g provides in part as follows:

"At the beginning of each fiscal year, the county commissioners of every county, the board of education of every school district, including county school districts, the council of or other legislative authority of every municipal corporation, including charter municipalities, the trustees of every township, and the governing board or body of every other type of political subdivision or taxing district authorized by law to levy taxes or expend public funds, shall make appropriations classified for the several purposes for which expenditures are to be made for and during the said fiscal year, from the funds of such county, school district, municipal corporation, township or other political subdivision or taxing district. * * * "

Section 5660 provides in part:

"No expenditure, excepting from the proceeds of bonds, shall be made unless authorized by appropriation both as regards purpose and amount, nor shall any expenditure be made from the proceeds of bonds unless duly authorized or directed. No contract, agreement or other obligation calling for or requiring for its performance the expenditure of public funds from whatsoever source derived, shall be made or assumed by any authority, officer, or employee of any county or political subdivision or taxing district, nor shall any order for the payment or expenditure of money be approved by the county commissioners, council or by any body, board, officer or employee of any such subdivision or taxing district, unless the auditor or chief fiscal officer thereof first certifies that the money required to meet such contract, agreement or other obligation or to make such payment or expenditure has been lawfully appropriated or authorized or directed for such purpose and is in the treasury or in process of collection to the credit of the appropriate fund free from any previous and then outstanding obligation or certification, which certificate shall be filed with such authority, officer, employee, commissioners, council, body or board, or chief clerk thereof. The sum so certified shall not thereafter be considered unencumbered until the county, subdivision or district is discharged from the contract, agreement, or obligation or so long as the order is in force. Taxes and other revenues in process of collection or the proceeds to be derived from lawfully authorized bonds, notes, or certifi-

cates of indebtedness sold and in process of delivery shall, for the purposes of this section be deemed in the treasury or in process of collection and in the appropriate fund. * * * "

It will be observed from the provisions of the statutes as quoted above that three positive, distinct and separate actions must have been taken before a payroll providing for compensation for the superintendent and matron of a county children's home can be approved.

First: The rate of compensation must be fixed by the trustees.

Second: A sum must be appropriated from the proper funds by the county commissioners for the distinct purpose of paying the compensation fixed by the trustees.

Third: A certificate must be filed by the auditor to the effect that the amount to be paid has been appropriated for the purpose and is in the treasury or in process of collection.

It is evident from the mandatory provisions of Section 5660, supra, that no more can be paid than is appropriated for the purpose nor can any more be paid than is fixed by the trustees, as is provided by Sections 3104 to 3105. If the amount appropriated is less than the amount fixed by the trustees, the amount appropriated governs. If the appropriation is more than the amount fixed by the trustees, the amount to be paid is governed by the amount fixed by the trustees.

It appears from your communication that the salary of the superintendent and matron had been fixed by the trustees previous to the beginning of the year 1926 on a yearly basis at \$1800 and \$864 per year, respectively. No action was taken by the trustees at the beginning of 1926 to change these salaries and, therefore, it was taken for granted that they were to continue in their positions at the same salary which had previously been fixed. If sufficient funds had been appropriated by the county commissioners and proper certificate made by the auditor, it is my opinion that it would not have been necessary for the trustees to have taken any affirmative action at the beginning of the year 1926 with reference to these salaries and that the superintendent and matron would no doubt continue on the same salaries that had been paid to them and which had been fixed for the previous year.

The county commissioners, however, only appropriated for the year 1926 the sum of \$2100 for the salaries of both superintendent and matron, and inasmuch as the appropriation measure thus made was not amended during the year, they of course could not have been paid any more than the amount of the appropriation, to-wit, \$2100.

On April 1, 1926, the trustees by resolution fixed the salary of the superintendent at \$83.33 $\frac{1}{3}$ per month and of the matron at \$76.00 per month, and these amounts being within the appropriation could have been drawn by these employees, assuming, of course, that proper certificate was made by the auditor as provided by Section 5660, supra, and proper payrolls made out and approved by the trustees and the county commissioners. But the superintendent and matron evidently refused to accept the amounts fixed by the trustees in their resolution of April 1, 1926, or at least they did not draw any more money during the year 1926. There was due, therefore, to these employees at the end of the year, an aggregate sum of \$1434, and although it was still in the county treasury in a physical sense, it could not be said to be an unencumbered and unexpended balance, but belonged to the superintendent and matron in the proportion fixed by the resolution of the trustees of April 1, 1926. It was not subject, therefore, to appropriation in 1927. See Section 5660, supra.

At the beginning of 1927 the county commissioners, as directed by Section 5649-3g, supra, appropriated for salaries for the superintendent and matron of the Muskingum County Children's Home the sum of \$4662 for the fiscal year, beginning January 1, 1927. At or about the same time the trustees by resolution fixed the salaries of the

superintendent and matron for the year 1927 at \$1800 and \$864, respectively, which being within the appropriation may be paid, thus putting these positions on the same schedule, so far as salaries were concerned, as had existed prior to the year 1926. At the same time the trustees requested that the superintendent and matron be paid \$1998 from the appropriation, being the difference between what their salary would have been for the year 1926 at the rate fixed for 1927 and the amount they actually drew.

During the first three months of the year 1926 the situation with reference to the salaries of the superintendent and matron was that their salaries had been fixed on a yearly basis of \$1800 and \$864 per year, respectively. The appropriation for the year to meet these salaries was \$2100, which was to be divided between them in the ratio that their aggregate salaries, as fixed by the trustees, would bear to the amount made available by appropriation. That is to say, had there been no further action taken by the trustees with reference to these salaries, the superintendent could have been paid during the year 1926 the sum of \$1418.82, and the matron \$681.08. However, the trustees did make some change in the salaries of these employees by their resolution of April 1, 1926, and the amount to which they are entitled for the last nine months of 1926 is to be governed by the terms of this resolution.

It is my opinion that when salaries are fixed *on a yearly basis*, no monthly payroll should be approved or paid which shows on its face that it has been calculated on a basis that would in a twelve month period aggregate more than the amount allowed for the entire year. It is evident that if this rule were not followed, and payments were made each month which in the aggregate would amount to more than was allowed for the twelve month period, it would lead to a situation wherein the fund would be exhausted before the end of the yearly period and the incumbent of the position could not be paid anything for the latter part of the year and in the event a vacancy should occur by death, resignation or otherwise in the office or position there would be no money available from the fund by which a person who was appointed to fill the vacancy might be paid.

In this case, however, payrolls were approved and the superintendent and matron were paid during the first three months of the year 1926, the sum of \$450 and \$216, respectively. These payments were made at the rate fixed by the board of trustees. While the trustees should have fixed the salaries at the beginning of the fiscal year in accordance with the appropriation, they did in this case accomplish the same result in their resolution effective April 1, 1926. In other words, taking into consideration the salaries paid during the first three months and those authorized to be paid in the remaining nine months, the aggregate came within the appropriation.

Summing up the situation and answering your questions together, it is my opinion that the superintendent and matron may at this time be paid for the last nine months of the year 1926 on the basis of the resolution of the trustees of April 1, 1926, assuming, of course, that payrolls had been regularly made during these nine months and proper certificate had been made by the auditor.

There is no way that any greater amount can be paid to these officials as salary for the year 1926. Their salaries for that year were limited by the appropriation which can not at this time be changed.

Their salaries for the year 1927 are now fixed at \$1800 and \$864, respectively, and the appropriation as made is sufficient to cover these salaries as so fixed so that there can be no difficulty so far as the salaries for this year are concerned.

You have called my attention to the fact that the trustees at no time took any action pursuant to Section 486-17, et seq., of the General Code. These statutes have reference to civil service regulations and in so far as provisions are made for the filing of charges against employees, service of notice thereof and conducting hearings thereon, they relate to reductions in rank and not to reductions in pay, and have no

application to a situation such as you have at the Muskingum County Children's Home.

Respectfully,
EDWARD C. TURNER.
Attorney General.

157.

APPROVAL, BONDS OF VILLAGE OF WOODSFIELD, MONROE COUNTY, OHIO—\$16,000.00.

COLUMBUS, OHIO, March 8, 1927.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

158.

APPROVAL, ARTICLES OF INCORPORATION OF THE LANCASTER CASUALTY COMPANY.

COLUMBUS, OHIO, March 9, 1927.

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

DEAR SIR:—I am returning to you herewith the articles of incorporation of "The Lancaster Casualty Company," with my approval endorsed thereon.

Respectfully,
EDWARD C. TURNER.
Attorney General.

159.

DIRECTOR OF HIGHWAY—REIMBURSEMENT OF PROSPECTIVE SELLER OF LAND FOR PREPARATION OF CONTRACT.

SYLLABUS:

Where no valid contract for the purchase of land by the state is entered into, the Director of Highways and Public Works may not lawfully reimburse a prospective seller of such land for expenses occurred by him in preparing an abstract of title and a deed for said premises.

COLUMBUS, OHIO, March 9, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—I acknowledge the receipt of your letter of recent date as follows:

"You will recall that an agreement was reached concerning the Reider-