

to read the word "and" as "or" in the statute. Such words may be interchanged if the sense requires it by virtue of section 27 of the Ohio General Code, but such words should be read as they appear when the statute gives a clear meaning without interchanging. Sutherland on Statutory Construction, section 397. In section 2546, General Code, "and" may be read as it appears without detriment to clearness of meaning.

In the course of the above mentioned opinion it is said at page 187:

"The statute authorizes the county commissioners to enter into a contract with one physician to furnish medical relief and medicines, if it is deemed advisable. It would not seem consistent or necessary to require a separate contract for each purpose, with one contractor.

I am of the opinion that the medicines referred to are such as are directly connected with and incidental to the work of furthering medical relief contracted for. If the legislature had intended that separate contracts should be entered into for each purpose, it would not have compelled a contract to be made for medicines with physicians alone; it would have authorized such contract to be made with druggists, dealers or other persons able to furnish the same, *if it had not been intended that the same contract was to include both medicines and medical relief. \* \* \** *The statute authorizes but one contract to be entered into for both medical relief and medicines.*" (Italics the writer's)

In the making of a contract with the physician pursuant to section 2546, General Code, the penal sections 12910 and 12912, General Code, prohibiting a person holding an office of trust or profit by election or appointment, or an agent, servant or employe of such officer or a board of such officers, from being interested in a contract for the purchase of property, is not applicable. Such penal statutes are construed strictly, and since section 2546, General Code, authorizes the county commissioners to make a contract with the physician for medical relief and medicines necessary within the jurisdiction of his work, such contract is not within the penal provisions.

I am of the opinion that the medicines referred to in your letter are such as are directly connected with and incidental to the work of furthering medical relief and that the physician is not entitled to be further compensated for the same.

My conclusion makes it unnecessary to discuss the question stated in your communication.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

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1175.

PROSECUTING ATTORNEY—UNAUTHORIZED TO EXPEND AMOUNT EXCEEDING AGGREGATE FIXED BY COMMON PLEAS COURT FOR REGULAR OFFICE EMPLOYMENT.

SYLLABUS:

*Where the judge or judges of the common pleas court of a county have fixed the aggregate amount to be expended by the prosecuting attorney for assistants,*

*clerks and stenographers, the prosecuting attorney may not pay out of the funds received by him, under the provisions of sections 3004 and 3004-1, General Code, an additional amount to his assistants and stenographers.*

COLUMBUS, OHIO, July 27, 1933.

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

GENTLEMEN:—I acknowledge receipt of your recent communication, which reads as follows:

"You are respectfully requested to furnish this department with your written opinion upon the following:

Section 2914 of the General Code provides that the Common Pleas Court fix the aggregate sum to be expended by the prosecuting attorney for compensation for assistants, clerk and stenographers in the prosecuting attorney's office.

QUESTION: In the event that the Court has, in compliance with the law, fixed the amount to be expended by the prosecuting attorney for such assistants, stenographers and other employes, may the prosecuting attorney legally pay out of the funds received by him under the provisions of sections 3004 and 3004-1, an additional amount to assistants and stenographers?"

I assume that you refer to the assistants, clerks and stenographers who are in the regular employment of a prosecuting attorney. Temporary counsel to assist the prosecuting attorney when conditions arise making such appointment necessary, is provided for by sections 2412 and 2413, General Code, and in Opinions of the Attorney General for 1929, Vol. III, page 1669, it was held that the funds under the provisions of section 3004, General Code, could be expended for a stenographer to take testimony at a coroner's inquest.

Sections 2914 and 2915, General Code, read as follows:

Sec. 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."

Sec. 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."

Section 3004, General Code, reads in part as follows:

"There shall be allowed annually to the prosecuting attorney in addition to his salary and to the allowance 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."

Section 3004 makes provisions only for expenses which are "not otherwise provided for." Since assistants, clerks and stenographers are otherwise provided for, a prosecuting attorney cannot, in my opinion, expend therefor any of the proceeds of his section 3004 fund. It is clearly the intention of sections 2914 and 2915 that the judges of the Court of Common Pleas shall have the right to fix the maximum amount which may be expended for such hire. In Opinions of the Attorney General for 1928, Vol. I, page 384, it was held that a prosecuting attorney may not use this fund to pay for a guard to guard prisoners in a county jail. While it was there held that safe keeping of such prisoners is not an official duty of a prosecuting attorney, the following was said:

"Although it may be said that the safe keeping of prisoners in county jails is in furtherance of justice the expense therefor is otherwise provided for: The manner of providing deputies for the safekeeping of prisoners in county jails being specifically provided for by law such expense may not be paid from the fund provided by Section 3004, supra. In other words, Section 3004, supra, provides a fund different and in addition to all other funds to be used by the prosecuting attorney for expenses incurred by *him* in the performance of *his* official duties and in the furtherance of justice, the expense therefor not being otherwise provided by law."

In Opinions of the Attorney General for 1919, Vol. I, page 597, it was held:

"Under section 3004 G. C. the prosecuting attorney is not authorized to incur expense for a stenographer, such expense being provided for in section 2914."

In that opinion, the Common Pleas judge had fixed an allowance of sixty dollars (\$60.00) for the year, and the prosecuting attorney claimed this was not sufficient for his requirement, but the following was said:

"Section 5, Article X of the constitution provides that:

'No money shall be drawn from any county \* \* \* treasury, except by authority of law.'

By the plain and specific terms of section 2914, supra, provision is made for compensation of stenographers in the prosecuting attorney's office. This fulfills the requirement of the constitutional provision above quoted, and at the same time it eliminates such an expense from being comprehended in that authorized by section 3004 G. C. under the provision for expenses 'not otherwise provided for.' It is quite clear that this expense, being specifically provided for, cannot be authorized in a

statute which authorizes incurring expenses not provided for.

From this it follows that the opinion of this department is that such expense may not legally be paid under section 3004 G. C., and the answer to your first question is therefore in the negative.

However, it is suggested as a matter of practical assistance to you that the judge may make a further allowance under section 2914 G. C. on the same theory that the commissioners may increase the allowance to deputy county officers, as held in Opinion No. 323, rendered by this department to the Bureau of Inspection and Supervision of Public Offices, a copy of which is herewith enclosed.

It may be observed that, consistent with the above conclusion, it would not be different had the court made no allowance."

In opinions of the Attorney General for 1917, Vol. I, page 478, it was held that assistants, clerks and stenographers for prosecuting attorneys cannot be paid out of the funds provided for by section 3004, General Code.

In an Opinion found in Opinions of the Attorney General for 1916, Vol. I, page 118, the following was held:

"Section 3004, G. C., provides for a fund to be used only for expenses not otherwise provided for and by its terms provides a fund different and in addition to that provided for in section 2914, G. C. The expense of assistants, clerks and stenographers is provided for in section 2914, G. C., and such expense may not be paid out of funds drawn from the county treasury under section 3004, G. C. The logical deduction from the fact that the court makes no allowance under section 2914, G. C., is that, in his opinion, such assistants, clerks or stenographers are not necessary.

The foregoing interpretation of section 3004, G. C., has been the uniform interpretation of that statute since its enactment.

I, therefore, hold that if the court refuses to make an allowance under section 2914, G. C., for assistants, clerks and stenographers, or either, that the prosecuting attorney may not use any of the funds drawn from the county treasury by virtue of section 3004, G. C., for either of such purposes."

See also Report of the Attorney General for 1914, page 1160; Opinions of the Attorney General for 1918, Vol. I, page 256.

Section 3004-1, General Code, reads as follows:

"When in the opinion of the prosecuting attorney an emergency exists by reason of the unusual prevalence of crime or when it appears to be probable that criminal efforts are being made to obstruct the due administration of justice, if the funds available to him under the provisions of section 3004 of the General Code are insufficient for the purposes of the necessary investigation and prosecution of such activities and offenses, he may make application to the judge or judges of the Court of Common Pleas of the county for additional funds. The judge or judges, if satisfied that the expenditure of additional funds will be for the public benefit and will promote the administration of justice, may by order entered in the journal of the court allow to him additional funds not in excess of ten thousand dollars (\$10,000.00) in any one year.

This fund shall be expended upon the order of the prosecuting attorney in the manner prescribed by section 3004 of the General Code."

If the money provided for by section 3004 cannot be used for these purposes, it follows that the money provided for by section 3004-1 cannot be so expended. The latter section provides for the expenditure of money additional to that available under the former section in case of emergency only when the funds provided for by the former section are insufficient. Hence section 3004-1, so far as the uses for which it can be expended are concerned, can have no broader scope than section 3004, General Code.

I am therefore of the opinion that where the judge or judges of the common pleas court of a county have fixed the aggregate amount to be expended by the prosecuting attorney for assistants, clerks and stenographers, the prosecuting attorney may not pay out of the funds received by him, under the provisions of sections 3004 and 3004-1, General Code, an additional amount to his assistants and stenographers.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

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1176.

APPROVAL, NOTES OF GALLIPOLIS CITY SCHOOL DISTRICT, GALLIA COUNTY, OHIO, \$14,185.00.

COLUMBUS, OHIO, July 27, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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1177.

APPROVAL, NOTES OF BELMONT VILLAGE SCHOOL DISTRICT, BELMONT COUNTY, OHIO, \$6,815.00.

COLUMBUS, OHIO, July 27, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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1178.

APPROVAL, NOTES OF SOMERSET-READING VILLAGE SCHOOL DISTRICT, PERRY COUNTY, OHIO, \$5,914.00.

COLUMBUS, OHIO, July 27, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*