

Your letter recites that the school has become crowded since the former issue was made, and that they now need additional room, and that the board now contemplates an issue of bonds for the purpose of building an addition to the building.

It is observed that no such purpose was recited in the resolution providing for the former issue. The facts are further presented that the full purposes for which the former issue was made have been accomplished, and that the original building has been fully completed and equipped.

The present issue of \$10,000.00 must necessarily be considered an independent issue, and for a different purpose than that contemplated at the time, and by the proceedings for the former issue. This conclusion is warranted by the facts as presented by you, and this being the case, it would not now be legal for a new issue for a different purpose to be made upon the approval of the electors upon a different proposition more than four years ago.

If it could be concluded that a part of the former issue could now be delivered, all that would be required would be the delivery of the bonds under a former advertisement of sale, but no such conclusion can be reached, and in view of the fact that this must be considered as a new independent issue, it will be necessary that full and different proceedings for such issue shall be had, and that if such amount cannot be raised under the provisions of section 7629, General Code, the issue for the purposes contemplated must be submitted to the electors for approval.

Respectfully,

C. C. CRABBE,

*Attorney General.*

2586.

DITCH IMPROVEMENT—COMPENSATION ALLOWED COUNTY COMMISSIONERS UNDER SECTION 6502 G. C.

*SYLLABUS:*

*County commissioners who have actually performed duties in connection with ditch improvement, in which former county commissioners have received compensation for four days work, may be allowed the compensation provided in section 6502, General Code.*

COLUMBUS, OHIO, June 22, 1925.

HON. FRANK WIEDEMANN, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR:—I am in receipt of your communication as follows:

“In 1924 the board of county commissioners of Marion county, Ohio, performed certain duties on a county ditch, under section 6502 of the General Code, two of these commissioners drew pay for four days for these services. In 1925 two new commissioners took office. It was necessary for the new commissioners to perform certain duties on the same ditch. Each one of the new commissioners performed four days work on this ditch. Will it be possible for them to draw pay under section 6502 of the General Code for the four days work that they performed on this ditch?”

Section 6502, G. C., provides that:

"In addition to the salary, otherwise provided by law, of the county commissioners, each commissioner shall receive for performing all duties required by him in this chapter, five dollars per day for each day actually engaged in work on the improvement as defined in this chapter but not to exceed one hundred days in any one year and not to exceed four days on any one improvement. \* \* \*"

The above section fixes compensation for county commissioners on ditch cases at five dollars per day. This section, by a proviso, then limits the amount which a commissioner may receive on any single improvement not to exceed four days.

The natural and appropriate office of a proviso is to restrain or qualify some preceding matter, and should be confined to what precedes it unless it clearly appears to have been intended to apply to some other matter.

In Sutherland on Statutory Construction, page 297, may be found the following:

"The proper function of a proviso being to limit the language of the legislature, it will not be deemed intended from additional words to enlarge or extend the act or the provision on which it is engrafted. Where it follows and restricts an enacting clause generally in its scope and language, it is to be strictly construed and limited to objects fairly within its terms. To a statute allowing receivers of public moneys one per cent on the money received, as a compensation for clerk hire, receiving, safe keeping and transmitting such money, was added this proviso: 'That the whole amount which any receiver of public moneys shall receive under the provisions of this act shall not exceed, for any one year, the sum of \$3,000.' Applying a strict construction it was held that this proviso limited the amount which each individual receiver was annually entitled to and not the amount payable annually to the incumbents of the office, whether one or more."

It will be noted that section 6502 G. C. provides compensation for performing duties provided in this section, in addition to the other salary provided for the county commissioners. The limitation is not to exceed one hundred days in any one year and not to exceed four days on any one improvement. The statute, in so many words, does not limit the charge which may be made against an improvement but limits the amount of salary which may be received. If it was intended to limit the amount which may be charged against an improvement it could have said so in plain and unmistakable terms.

Applying the rule laid down in Sutherland on Statutory Construction, as quoted above, it is my opinion that county commissioners who have actually performed duties in connection with ditch improvement, in which former county commissioners have received compensation for four days work, may be allowed the compensation provided in section 6502, General Code.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*