

common pleas might be properly taken. In the other view, it can not be properly claimed, that from the exercise of a mere discretionary power, vested in the board of county commissioners, an appeal might be taken to the court of common pleas, under the general language of the law allowing and regulating such appeals. We do not understand the counsel for the defendants in error to claim that, in this view, their appeal could be sustained, and their argument to show their right to appeal, proceeds on the assumption that they had established the former view to be the correct one.

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The conclusion which must follow the views we have expressed is, that the appeal from the board of county commissioners to the court of common pleas ought to have been dismissed for want of jurisdiction. The judgment of the district court and of the court of common pleas will, therefore, be reversed, with costs; and this court, rendering such judgment as the court of common pleas should have rendered, will order that the appeal be dismissed for want of jurisdiction."

In specific answer to the questions submitted, in view of the foregoing, it is my opinion:

1. A court of common pleas may appoint counsel to assist the prosecuting attorney, under and by virtue of Section 13562, General Code, without first consulting the board of county commissioners as to whether or not any appropriation previously has been made for compensating such appointee. The allowance of such appointee's compensation and the fixing of the amount thereof rests in the discretion of the county commissioners (75 O. S. 539); and the same can not be paid unless an appropriation has been made therefor.

2. Under the provisions of Section 13618, General Code, the amount of compensation to be paid by the county to an attorney, under appointment by the trial court for the purpose of defending an indigent prisoner, is such sum as the commissioners of said county, in the exercise of their discretion, may allow, subject to the limitations set out in said section. (Following first branch of syllabus in case of *Long vs. Board of Commissioners*, 75 O. S. 539.)

3. County commissioners, by virtue of the authority vested in them to fix the amount of appropriations, as provided for in Section 5625-29, et seq., General Code, have it within their power to regulate the aggregate amount to be expended by the prosecuting attorney, in any one year, of the allowance made to him under the authority of Section 3004-1, General Code. If the court, in fixing an allowance under Section 3004-1, General Code, fixes it in excess of the amount appropriated, and the county commissioners do not within the fiscal year amend their appropriation so as to include the amount of such allowance then, such an allowance is ineffective, and the court is without power to require the commissioners to appropriate monies to cover same.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

1402.

APPROVAL, BONDS OF THE CITY OF WARREN, TRUMBULL COUNTY—  
\$12,085.00.

COLUMBUS, OHIO, December 19, 1927.

*Industrial Commission of Ohio, Columbus, Ohio.*