

"Since the proposed monument is not in my opinion a building or structure within the contemplation of the laws pertaining to public buildings (Sections 2314 et seq., General Code,) it is not deemed necessary that the steps laid down in said Sections 2314, et seq., General Code, be complied with."

In view of the foregoing it is my opinion that neither the provisions of Section 154-40, General Code, nor those of Sections 2314, et seq., General Code, are applicable in erecting a monument in honor of the memory of the soldiers and sailors of the Spanish-American War, the Philippine Insurrection and the Chinese Relief Expedition, since the legislature by the enactment of Sections 15289-13, et seq., General Code, 112 O. L. 133, has placed the entire authority and responsibility of selecting the design, securing the plans and estimates and the letting of a contract for the erection of such a memorial in the United Spanish War Veterans Memorial Commission.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1339.

COUNTY COMMISSIONERS—NO AUTHORITY TO FIX NUMBER OR COMPENSATION OF ASSISTANTS TO COUNTY OFFICIALS—COMPENSATION OF ASSISTANTS NOT TO EXCEED APPROPRIATION OF COMMISSIONERS.

SYLLABUS:

Although the board of county commissioners has nothing to do with the question as to the number of deputies, assistants or clerks that may be appointed by the sheriff and other officers of the county for their respective offices, nor with the amount of compensation to be paid any deputy, assistant or clerk in said several offices, the board of county commissioners is charged with the duty, to be exercised in its sound discretion, of making appropriations to pay the compensation of deputies, assistants and clerks in such offices; and the amount that may be expended by the sheriff or other county officers for deputies, assistants or clerk high, may not in the aggregate exceed the appropriations made by the board of county commissioners for said purpose with respect to the said several county offices.

COLUMBUS, OHIO, December 8, 1927.

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

GENTLEMEN:—This department is in receipt of your recent communication in which you enclose a letter from the board of county commissioners of Belmont County, Ohio. My opinion is requested with respect to the questions therein stated, as follows:

- "1. Can county commissioners be made to pay special deputies taken on by the sheriff of a county during a strike when no appropriation has been made for same and when there is no money to be appropriated?
2. Can the sheriff, probate judge, prosecuting attorney, or clerk of courts spend more money than has been appropriated to each office by the county commissioners and compel the county to pay the excess amount spent?"

With respect to the appointment by county officers of deputies, assistants and clerks, and the payment of compensation of such appointees, Section 2981, General Code, as amended 112 O. L. 107, and Section 2987, General Code, provide as follows:

Section 2981. "Such officers may appoint and employ necessary deputies, assistants, clerks, bookkeepers or other employes for their respective offices, fix their compensation, and discharge them, and shall file with the county auditor certificates of such action. Such compensation shall not exceed in the aggregate for each office the amount fixed by the commissioners for such office. When so fixed, the compensation of each duly appointed or employed deputy, assistant, bookkeeper, clerk and other employe shall be paid semi-monthly from the county treasury, upon the warrant of the county auditor. Each of such officers may require such of his employes as he deems proper to give bond to the state in an amount to be fixed by such officer with sureties approved by him, conditioned for the faithful performance of their official duties. Such bond with the approval of such officer, indorsed thereon, shall be deposited with the county treasurer and kept in his office."

Section 2987. "The deputies, assistants, clerks, bookkeepers, and other employes of such offices shall be paid from the appropriate county fund or funds, upon the warrant of the county auditor."

It will be noted that said Section 2981, supra, contains the provision that :

"Such compensation shall not exceed in the aggregate for each office the amount fixed by the commissioners for such office."

Until its repeal by House Bill No. 80, which was passed April 13, 1927, 112 O. L. 391, and went into effect August 10, 1927, Section 5649-3g provided 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. * * * "

This section further provided that the aggregate of all appropriations of, or from, the funds of any county, political subdivision, or taxing district for any fiscal year, should not exceed the amount of the official estimate of revenues and balances of such county, subdivision or district as made by the budget commission or by the Tax Commission of Ohio, as provided for by the then provisions of Sections 5649-3d and 5649-3f, General Code. Section 5649-3h before its repeal by said House Bill No. 80, above referred to, contained the following provision :

"Any appropriation ordinance or other appropriation measure may be amended or supplemented from time to time, or a transfer may be made from one appropriation item to another, provided that such amendment or supplement shall comply with all provisions of law governing the appropriating authority, including compliance with Section 5 of this act (G. C. 5649-3g)
* * * "

It may be assumed that acting under the provisions of Section 5649-3g, General Code, above noted, (and possibly Section 5649-3h as well), the board of county com-

missioners of Belmont County has made appropriation for the compensation of deputies and clerks in the office of the sheriff and of the other county officers of said county for and during the fiscal year 1927.

To determine what the board of county commissioners may now do to meet the situation indicated by the questions submitted for my opinion, we must look to the appropriate provisions of said House Bill No. 80 which, as before noted, went into effect August 10, 1927. The provisions of this act have been carried into the General Code as Sections 5625-1 to 5625-39 inclusive. The provisions of Sections 5649-3g and 5649-3h, General Code, above noted, have been substantially carried into the provisions of the new act as Sections 5625-29, 5625-30 and 5625-32, General Code. Said Sections 5625-29 and 5625-30 read as follows:

Section 5625-29. "On or about the first day of each year, the taxing authority of each subdivision or other taxing unit shall pass an annual appropriation measure and thereafter during the year may pass such supplemental appropriation measures as it finds necessary, based on the revised tax budget and the official certificate of estimated resources or amendments thereof. If it desires to postpone the passage of the annual appropriation measure until an amended certificate is received based on the actual balances, it may pass a temporary appropriation measure for meeting the ordinary expenses of the taxing unit until not later than April first of the current year, and the appropriations made therein shall be chargeable to the appropriations in the annual appropriation measure for that fiscal year when passed."

Section 5625-30. "The total amount of appropriations from each fund shall not exceed the total of the estimated revenue available for expenditure therefrom as certified by the budget commission or in case of appeal by the Tax Commission of Ohio. No appropriation measure shall become effective until there be filed with the appropriating authority by the county auditor a certificate that the total appropriations from each fund taken together with all other outstanding appropriations, do not exceed such official estimate, and if amended the last amended official estimate, and in every case in which the appropriation does not exceed such official estimate, the county auditor shall give such certificate forthwith upon receiving from the appropriating authority a certified copy of the appropriation measure. Appropriations shall be made from each fund only for the purposes for which such fund is established."

Section 5625-32, General Code, reads in part as follows:

"Any appropriation ordinance or other appropriation measure may be amended or supplemented from time to time, provided that such an amendment or supplement shall comply with all provisions of law governing the taxing authority in making an original appropriation. * * *

Section 33 of said act, now Section 5625-33, General Code, provides that:

"No subdivision or taxing unit shall make any appropriation of money except as provided in this act."

Section 38 of said act, Section 5625-38, General Code, reads in part as follows:

"Each political subdivision shall have authority to make expenditures for the payment of current pay rolls upon the authority of a proper appropriation for such purpose provided that the positions of such employees and their

compensation have been determined prior thereto by resolution or ordinance or in the manner provided by law."

However, it will be noted that Section 39 of said act, Section 5625-39, General Code, contains the following provision:

"That this act shall in no manner affect existing funds established in any subdivision of the expenditures therefrom until January 1, 1928, but upon such date all provisions of this act as to funds shall go into force and effect, and the balance, if any, in any special fund derived from a special tax levy within the fifteen mill limitation that is abolished by this act shall be credited to the appropriate general fund unless otherwise provided by law. * * * "

This provision last above quoted has the effect of preserving intact the fund from which the board of county commissioners made appropriations for the compensation of deputies and clerks for the various county offices for the fiscal year 1927. Said board of county commissioners may now in its discretion by supplemental appropriation under Section 32 of said House Bill No. 80 Section 5625-32, General Code, provide for additional monies for the compensation of deputies, assistants or clerks for said county offices. Such supplemental appropriations for the balance of the fiscal year can not be in excess of the receipts and balances in the fund from which said appropriations are made. In this connection it may also be noted, as held in a former opinion of this department, (Opinion No. 969, under date of September 8, 1927), that although Sections 2296, et seq., General Code, providing among other things for the transfer of county funds on the order of the common pleas court have been repealed by said House Bill No. 80, the effect of the above quoted provisions of Section 39 of said act, Section 5625-39, General Code, is to postpone the repeal of said statutes until January 1, 1928. In the meantime the board of county commissioners, if it so desires, may avail itself of the authority of these sections, for the purpose of putting into the general county fund monies from which said supplemental appropriations may be made, if in its discretion said board of county commissioners sees fit to make the same.

However, if the board of county commissioners of this county, in the exercise of its discretion in the matter, does not see fit to make such supplemental appropriations, or if by way of receipts and balances in said fund or monies transferred thereto there is not in said fund sufficient monies to make such supplemental appropriations, there would in such case be no authority for paying deputies, assistants or clerks in any such county offices an aggregate compensation exceeding that now fixed by appropriations heretofore made by the board of county commissioners for such respective offices.

In Opinion Number 59 of this department under date of February 9, 1927, it was held:

"1. County commissioners have full authority to fix the amount of the appropriation for deputy hire in the various county offices, and each county officer in fixing the compensation to be paid to his deputies, assistants, clerks, bookkeepers and other employes is limited to the amount of the appropriation."

"2. An appropriation measure governing money for deputy hire in county offices when once passed by county commissioners, may be amended by either increasing or reducing the amount appropriated for such purpose, and the county officer appointing such deputies, assistants, clerks, bookkeepers and other employes, cannot expend in any fiscal year a greater sum for the salary of such deputies and other assistants than is fixed in the appropriation measure as amended."

The opinion of this department just referred to has been followed by others touching the question of the compensation of deputies, assistants or clerks in various county offices; and by way of direct answer to the questions submitted I am of the opinion that although the county commissioners have nothing to do with the question as to the number of deputies, assistants, or clerks that may be appointed by the sheriff and other officers of the county for their respective offices, nor with the amount of compensation to be paid any deputy, assistant or clerk in said several offices, said board of county commissioners is charged with the duty, to be exercised in their sound discretion, of making appropriations for the compensation of deputies, assistants and clerks in such offices; and the amount that may be expended by the sheriff or other county officers for deputy, assistant or clerk hire may not in the aggregate exceed the appropriations made by the board of county commissioners for said purpose with respect to the said several county offices.

The conclusions here reached by me fully answer the second question submitted, and, in a general way, the first question as well. However, the first question indicates that the same has reference to the compensation of deputies appointed by the sheriff to meet an emergency created by the miners' strike in said county. By the provisions of Section 2833, General Code, the duty of preserving the public peace is imposed on the sheriff of the county.

The question of securing funds to pay the compensation of extra deputies appointed by the sheriff of a county to meet an emergency of this kind was considered in Opinion 1278 of this department, under date of November 18, 1927. In this opinion there was a discussion of the case of *Youngstown vs. National Bank*, 106 O. S. 563, wherein it was held that the advancement of money by a bank at the request of the mayor and other authorities of the city of Youngstown to pay the compensation of extra patrolmen, to meet an emergency caused by a riot in said city, created a legal obligation against the city which it was authorized and required to pay. Referring to the case just cited, the former opinion of this department above referred to, after noting the provisions of Section 2833, General Code, with respect to the duties and powers of the sheriff, says:

"This section is as broad as that conferring authority upon the mayor of a municipality and the analogy between the two offices is plain. If therefore, as the court states in the case above referred to, the municipality has inherent authority to incur debts to suppress insurrection, that authority would also apparently exist in a county. In this connection, however, it should be observed that this inherent power is only recognized in the case of extreme public exigency and resort to a departure from the ordinary statutory method of incurring indebtedness should not be made until all of the ordinary resources have been exhausted, and then only in the event the protection of persons and property shall imperatively so demand."

A copy of said opinion Number 1278 is herewith enclosed.

Respectfully,
EDWARD C. TURNER,
Attorney General.