

General Code shall be the same as in civil cases, and the expenses incurred in any of said removal proceedings shall be paid out of the general revenue fund of the county."

Section 2917, General Code, provides that the prosecuting attorney "shall be the legal adviser for all township officers, and no such officer may employ other counsel or attorney except on the order of the township trustees duly entered upon their journal, in which the compensation to be paid for such legal services shall be fixed."

I find no statutory provision imposing upon the prosecuting attorney the duty of prosecuting proceedings commenced under the provisions of sections 10-1, et seq., General Code, and in this case it appears that the trustees passed the resolution required by section 2917 for the employment of counsel. However, this section can refer only to such legal services as may be required by a township officer in connection with his official duties. The two township trustees in signing the complaint asking for the removal of the other trustee, and in taking the initiative in said proceeding, were acting only as electors of the township rather than in their official capacity. I am of the view, therefore, that they had no authority to employ counsel to prosecute such proceedings and to charge the township therewith.

Attorney fees cannot be taxed as part of the court costs except by express statutory authority. *Koelble vs. Runyan*, 25 O. A. 426. While section 10-4, General Code, authorizes the payment from the general fund of the county of the expenses incurred in such proceedings, I am of the view that this provision does not include the fees of the attorney employed either by the prosecution or by the defense, and that county commissioners have no authority to pay the same from county funds.

Respectfully,

JOHN W. BRICKER,

Attorney General.

170.

SOLDIERS' RELIEF—LEGISLATURE MAY PLACE RESTRICTIONS ON THE EXPENDITURE OF FUNDS APPROPRIATED—TIME OF FILING CLAIM MAY BE LIMITED.

SYLLABUS:

The legislature, in making a specific appropriation for the payment of compensation to World War Veterans, may place such restrictions and limitations on the expenditure of the funds so appropriated, with respect to the manner of receiving, approving and paying claims for such compensation as it may, in its discretion see fit to make.

COLUMBUS, OHIO, February 25, 1933.

HON. J. T. ROBERTS, *Commissioner of Soldiers' Claims, State House, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your inquiry relating to the action of the 89th General Assembly in making an appropriation for the further payment of claims for "adjusted compensation" for World War Veterans.

The act of the legislature to which reference is made was enacted in 1931 and will be found in 114 Ohio Laws, at page 80. It is entitled:

“AN ACT making appropriations to the commissioners of the sinking fund for the further payment of adjusted compensation for service in the world war.”

Section 1 of said act provides for the appropriation of \$54,000.00 from the general revenue fund of the state “for the uses and purposes of the commissioners of the sinking fund of the state of Ohio, specified in sections 2 and 3 hereof.”

Section 2 of the act provides as follows:

“Such moneys so appropriated shall be paid out by the adjutant general under the direction of the commissioners of the sinking fund in the same manner and under the same restrictions as provided in article VIII, section 2a, of the constitution of Ohio as adopted by the people at the general election held in November, 1921.”

Section 3 of said act provides that the sum appropriated “shall be added to, and become a part of ‘the World War Compensation Fund’ in the treasury of the state of Ohio, and all the powers and duties of the Commissioner of the Sinking Fund relating to ‘the World War Compensation Fund’ are conferred and imposed upon the said Commissioners of the Sinking Fund in the disbursement of the sum hereby appropriated, except as otherwise provided herein, to the end that sufficient funds may be provided for the payment to such persons entitled thereto, of the amount of adjusted compensation specified in Article VIII, Section 2a, of the Constitution of Ohio, according to the intent of said section of the Constitution.” Further provision is made in said act to the effect that \$4,000.00 of the amount so appropriated may be used for administrative purposes. The section concludes:

“Provided that no claims for adjusted compensation shall be filed or paid by or under the direction of said sinking fund commissioners or otherwise, after December 31, 1932, at the close of which date all of the powers and duties of said commissioners of the sinking fund and of all other officers and employes in connection with the payment of claims for adjusted compensation shall terminate and be wholly ended.”

Your specific question is whether or not it was within the power of the legislature to enact and render effective the provisions contained in the proviso quoted above, in view of the provisions of Article XIII, Section 2a, of the Constitution of Ohio. In other words, may the legislature lawfully provide, as it did, that no claim for adjusted compensation shall be filed after December 31, 1932, at which date all powers and duties of the Commissioners of the Sinking Fund and of all other officers and employes in connection with the payment of claims for adjusted compensation shall terminate and be wholly ended, in view of the provisions of the Constitution to the effect that the Commissioners of the Sinking Fund shall from time to time fix limitations for the presentation of claims for said payments?

The "Commissioners of the Sinking Fund" were created by an amendment to the Constitution of Ohio adopted in 1921, known as Section 2a of Article VIII of said Constitution. By the terms of this amendment the said commissioners were directed to issue bonds of the State of Ohio not to exceed the total sum of \$25,000,000.00, the proceeds of which bonds, when sold, were to be paid into the treasury of the State of Ohio, to the credit of a special fund to be known as "The World War Compensation Fund."

The said commissioners were authorized to provide by a state levy of taxes for the retirement of the said bonds and the payment of the interest thereon, and for a sum sufficient to meet the cost of administering The World War Compensation Fund.

Subject to such regulations as they might from time to time promulgate, the said commissioners were authorized and directed to pay out of the said World War Compensation Fund to persons residents of Ohio at the time of the commencement of service, who had served honorably on active service in the army, navy or marine corps of the United States of America during the World War and to those persons, being also citizens of the United States who had served honorably in similar forces of any government allied with the United States in the said war with a grade of not higher than captain in the army or marine corps, or a corresponding grade in the navy, adjusted compensation as therein provided. The said commissioners were expressly empowered to make certain regulations with reference to the administration of the said World War Compensation Fund, among others, to fix "from time to time limitations for the presentation of claims for said payments."

It is also provided in said Section 2a, of Article VIII of the Constitution, with reference to the bonds thereby authorized to be issued, that:

"The proceeds of the sale of said bonds shall be paid into the treasury of the state of Ohio, subject to be paid out, without appropriation by the General Assembly upon the order of the said 'The Commissioners of the Sinking Fund,' the same to be known as 'The World War Compensation Fund'."

Following the adoption of said Section 2a of Article VIII of the Constitution, the bonds thereby authorized were sold and payment of claims for adjusted compensation began forthwith.

The fund created by the sale of the bonds was not sufficient to meet all claims for compensation that were filed. As early as 1922, an appropriation of \$7,800,000.00 was made by the legislature for the purpose of paying accumulated claims for adjusted compensation that could not be paid from the original fund. In 1925, three and a quarter millions of dollars of this appropriation was returned to the general revenue fund upon order of the commissioners in the belief that \$500,000.00 then remaining after the return of the three and a quarter millions of dollars would be sufficient to meet all claims.

It was found later, however, that there were still a large number of claims remaining unpaid after the \$500,000.00 was exhausted and another appropriation of \$25,000.00 for the same purpose was made in 1929. Again, in 1931, it was found that the proceeds of all previous appropriations made for the purpose of paying adjusted compensation were exhausted, and an additional appropriation of \$54,000.00 was made for this same purpose by the special act of the legislature noted above. This sum was later supplemented by an allowance of the Emergency Board in the sum of \$1,000.00.

This last appropriation has been entirely exhausted, but there still remain on file approved claims aggregating approximately \$20,000.00 and additional claims are being presented from time to time. Because of the express terms of the act no claims may be filed after December 31, 1932, and, of course no approved claims can now be paid, regardless of the terms of the act, on account of a lack of funds which may be used for that purpose.

The question of whether or not the legislature might lawfully fix a time within which claims might be presented or paid is, at this time, a moot question, although it may become important if the present or future legislatures make further appropriations for the purpose of paying claims for World War Compensation.

In each instance, since the exhaustion of the original fund created by the sale of bonds as authorized by Section 2a, of Article VIII of the Constitution where the legislature has made appropriations from the general fund of the state for adjusted compensation payments, it has, by the terms of the appropriation, signified its intention that the proceeds of the appropriation should be paid into "The World War Compensation Fund" and "The Commissioners of the Sinking Fund" were made the medium by which the fund was to be administered, in some respects at least.

"The World War Compensation Fund" was the name fixed by the terms of the constitutional amendment by which the fund created by the sale of the bonds authorized to be issued for World War Compensation purposes was to be known. Strictly speaking, when this fund was exhausted, the fund ceased to exist, so far as any constitutional mandate was concerned. When the legislature chose to direct the payment of the proceeds of an appropriation to "The World War Compensation Fund" it signified nothing more than that the fund created by the appropriation was for the identical purpose for which the original "World War Compensation Fund" has been created. The name is not significant. It would not be contended that the legislature could not, if it had seen fit, appropriate funds for the payment of adjusted compensation for World War Veterans on a different basis than that fixed by the Constitution, payable into a fund to be known by a different name than "The World War Compensation Fund" and to be administered by some other or different board or agency than "The Commissioners of the Sinking Fund" as those commissioners were created and empowered by the Constitution.

It will be observed that these commissioners, under the Constitution, and so far as the administration of the fund created upon the sale of the bonds authorized to be sold by the Constitution for World War Compensation purposes was concerned, were charged with the duty of giving orders upon the treasury for the payment of claims for compensation, whereas, under the terms of Section 2 of the Act of 1931, appropriating \$54,000.00 for adjusted compensation purposes, the moneys so appropriated were to be paid out of the Adjutant General under the direction of the Commissioners of the Sinking Fund.

Although this appropriation is for the same purpose as were the proceeds of the bond issue authorized by the people upon the adoption of Section 2a of Article VIII of the Constitution, the legislature might, in my opinion, have provided for the administering and paying out of the fund by any agency it might have designated or created and might have placed such restrictions or limitations as it saw fit on the power thus granted.

The mere fact that the Commissioners of the Sinking Fund were designated to direct the Adjutant General in the paying out of the proceeds of the appro-

priation, does not mean that these commissioners had all the powers with respect to the fund and the receiving and approving of claims to be paid from the fund that they had with respect to the original fund.

The legislature did endow the commissioners with powers that they had possessed with reference to the original fund but limited these powers by the provision, "except as otherwise provided herein." Further and different provisions are made therein with reference to the fixing of the time within which claims might be filed, than were provided with reference to those made in the Constitution, and it is my opinion that it was within the power of the legislature, so far as this particular appropriation is concerned, to fix the time within which claims to be paid from this particular appropriation might be filed and paid.

The Constitution, in Section 2a, Article VIII, deals entirely with the fund created by the sale of bonds therein authorized to be issued, and the limitation and restrictions contained in said constitutional provision apply only to that particular fund. The Constitution makes no references whatever to future appropriations that might be made by the legislature for the same or a similar purpose as that for which "The World War Compensation Fund" was created. There is no language in this constitutional provision which may be construed to limit or in any wise control future appropriations made for the payment of compensation to World War Veterans.

No moneys may be paid from the state treasury except in pursuance of a specific appropriation for that purpose. (Article II, Section 22, Constitution of Ohio.) The sole power to make appropriations of these funds is vested in the General Assembly. By virtue of this power of appropriation the General Assembly exercised its discretion in determining not only what claims shall be paid but the circumstances under which the claims may be paid and the manner of paying them. This clearly includes the power to place such limitations and restrictions on the disbursement of the funds included with any specific appropriation as the legislature may, in its discretion, see fit to make. *State vs. Medbery*, 7 O. S. 522.

I am therefore of the opinion that the legislature, in making a specific appropriation for the payment of compensation to World War Veterans, may place such restrictions and limitations on the expenditure of the funds so appropriated, with respect to the manner of receiving, approving and paying claims for such compensation, as it may, in its discretion, see fit to make.

Respectfully,

JOHN W. BRICKER,
Attorney General.

171.

APPROVAL, NOTES OF CUYAHOGA FALLS CITY SCHOOL DISTRICT,
SUMMIT COUNTY, OHIO—\$24,000.00.

COLUMBUS, OHIO, February 28, 1933.

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