

Note from the Attorney General's Office:

1930 Op. Att'y Gen. No. 30-1732 was overruled by
1988 Op. Att'y Gen. No. 88-058.

1732.

COUNTY COMMISSIONERS—UNAUTHORIZED TO PAY FOR LIGHT
USED IN SHERIFF'S LIVING QUARTERS WITHIN THE JAIL.

SYLLABUS:

The county commissioners may not legally pay from the county funds the bill for furnishing light to the part of the jail utilized as the residence of the jailer.

COLUMBUS, OHIO, April 4, 1930.

HON. ALBERT T. STROUP, *Prosecuting Attorney, Van Wert, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“Our county commissioners would like a more recent opinion from your office as to whether it is their duty or the sheriff's duty to pay the light bill on the residence part of the jail, or in other words, who is it the duty of to pay the light bill on that part of the jail in which the sheriff lives.

In case it might be of some assistance to you, I am citing Atty. Gen. Opp., No. 475, page 268, 1912.”

The opinion of the Attorney General to which you refer contains a comprehensive discussion of the power of the county commissioners to allow funds for the lighting of that part of the jail which is occupied by the sheriff as his residence. The conclusion reached by the then Attorney General was based upon the case of *State ex rel. vs. Toan*, Aud. 13 O. C. C. (N. S.) 276, which expressly held that that county commissioners are without authority to provide for the expense of lighting such part of the jail. Since the rendition of the opinion of the Attorney General there seems to have been no ruling either by the courts or this office in conflict with the former holding.

In an opinion found in Opinions of the Attorney General for the year 1919, page 635, the then Attorney General had under consideration the question as to whether county commissioners had power to provide living quarters for the county jailer when constructing a jail. The opinion concluded that the commissioners had such power by implication from the various sections of the General Code requiring them to provide for the jail. In connection with said opinion it was pointed out that it had been a common practice for many years in Ohio to provide such accommodation and it was indicated that it was proper to charge no rental therefor.

The Toan case was considered by the then Attorney General, but there is nothing in said opinion to indicate that he disagreed with the conclusions therein. It follows, of course, that in the mind of said Attorney General there was a distinction between providing living quarters and lighting them. This distinction was only made in the Toan case. However, the court in this case intimated there was no authority to provide residence quarters except by reason of the long administrative practice. Although the distinction between the two services rendered to the sheriff is difficult to define, it must be admitted that over a long period of years there has been an administrative interpretation to the effect that light may be furnished to the jailer's quarters free and that living quarters for the jailer may properly be provided. It is a well established proposition of law that an administrative interpretation of a law over a long period of time will not be disturbed except for cogent reasons. In so far as your question is concerned we

have, as hereinbefore indicated, the court decision and an Attorney General's opinion upon which said administrative practice is based.

In view of the foregoing, I am impelled to the conclusion that the county commissioners may not legally pay from the county funds the bill for furnishing light to the part of the jail utilized as the residence of the jailer.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1733.

APPROVAL, BONDS OF VILLAGE OF BELLVILLE, RICHLAND COUNTY
—\$13,212.26.

COLUMBUS, OHIO, April 4, 1930.

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

1734.

APPROVAL, BONDS OF VILLAGE OF ST. CLAIRSVILLE, BELMONT
COUNTY—\$122,000.00.

COLUMBUS, OHIO, April 4, 1930.

Industrial Commission of Ohio, Columbus, Ohio.

1735.

DISAPPROVAL, BONDS OF MIDDLEPORT VILLAGE SCHOOL DISTRICT,
VAN WERT COUNTY—\$35,000.00.

COLUMBUS, OHIO, April 4, 1930.

Re: Bonds of Middleport Village School Dist., Van Wert County, Ohio, \$35,000.00.

Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The transcript of proceedings relative to the above issue discloses that these bonds are being issued for the purpose of constructing a fireproof building, repairing and improving a non-fireproof building, and equipping and furnishing the same. The aggregate amount of the issue is \$50,000.00. It further appears that the resolution declaring the necessity of the issue was passed July 18, 1929, this resolution being required by Section 2293-19, General Code, which reads in part as follows: