

910.

APPROVAL, BONDS OF GEAUGA COUNTY, OHIO—\$19,000.00.

COLUMBUS, OHIO, August 24, 1927.

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

911.

COUNTY COMMISSIONERS—MAY NOT LAWFULLY APPROPRIATE
PUBLIC FUNDS TO PAY OBLIGATION INCURRED BY DONORS TO
AID IN CONSTRUCTION OF MEMORIAL HALL.

SYLLABUS:

County commissioners may not lawfully appropriate public funds to pay the obligation incurred by donors to aid in the construction of a Memorial Hall.

COLUMBUS, OHIO, August 24, 1927.

HON. CHARLES DONALD DILATUSH, *Prosecuting Attorney, Lebanon, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of recent date which reads as follows:

“There is located in the village of Lebanon, Warren county, Ohio, a structure known as Memorial Hall, which is used as an assembly hall for all the patriotic organizations in this community.

The funds which enabled the erection of this structure were derived from taxation and from contributions. The history of its erection is peculiar, and I am enclosing herewith, under separate cover, a history of the erection of this hall, which Judge Willard J. Wright requested of me in 1923.

As set forth therein, after the board of county commissioners of Warren county, Ohio, had expended the fund derived from taxation, and after the funds received from contributions had been expended by the board of trustees, it was still necessary to borrow about \$3,000.00 to complete the hall.

The local post of the American Legion borrowed this money from the bank, and about thirty business men in town guaranteed its payment. Two thousand dollars of this amount has not been paid and the bank now contemplates calling the note, and as the local Post of the American Legion is unable to pay this note, the guarantors will be compelled to do so unless the second paragraph of section 14848, the last sentence of section 14849-2 and the fourth paragraph of Section 14849-5 may be construed as granting to the board of county commissioners the authority to pay off at least \$1,500.00 of this obligation.

As two special acts of the legislature were enacted to make possible the erection of this building, I would very much appreciate your opinion as to whether or not these sections grant such authority to the board of county commissioners."

It is important to keep in mind the fundamental rule that county commissioners are officers whose "powers are limited to those specifically conferred upon them by law and those necessarily incident to the exercise of the powers granted." *State ex rel. vs. Yeatman*, 22 O. S. 546; *State ex rel. vs. Sayre*, 12 O. N. P. (N. S.) 343.

From your letter it appears that the money used to construct the Memorial Hall was obtained from two sources, viz., taxation and donation; that the local Post of the American Legion donated \$3,000 to the county commissioners to aid in the construction of the building; that the Post borrowed the money donated by it from a bank on its promissory note, on which business men became sureties. It appears that the Post has paid one thousand dollars on the note and the remainder of the note is now due and owing to the bank. Your question is, has the board of county commissioners of Warren county authority to pay the obligations under certain provisions found in section 14848, 14849-2 and the fourth paragraph of section 14849-5 of the General Code.

The provisions contained in section 14848, General Code, to which you refer, are in the last paragraph thereof and read as follows:

"Providing, however, that in order to improve or maintain county property the commissioners of any county may appropriate from the general fund of the county, and without submitting the same to a vote of the people, any amount, or amounts not to exceed fifteen hundred dollars, for the purpose of erecting or assisting in the erection upon county property of such memorial for the soldiers and sailors or for the repairing of any such memorial already erected."

The above provision authorizes the county commissioners to appropriate from the general fund of the county, without submitting the same to a vote of the people, an amount not exceeding fifteen hundred dollars, for the purpose of erecting, or assisting in the erection, on county property, the memorial structure authorized in the first paragraph of section 14848, which makes provision for the submitting to a vote of the people of the county the question of whether or not a tax of not more than one-half mill shall be levied on each dollar of the tax duplicate of the county to raise a fund to erect a monument or other suitable memorial structure to perpetuate the memory of soldiers from said county who served in the Union Army during the late Rebellion.

In section 14849, General Code, provision is made for the payment of a proposed tax in two installments and for the expenditure of the money when collected by the commissioners in the erection of a monument or other suitable memorial structure. In the year 1915 and subsequent to the enactment of Sections 14848 and 14849, supra, the legislature passed supplemental sections authorizing the use of money raised by taxation for the erection of a memorial structure containing rooms suitable for a meeting place for any post of the Grand Army of the Republic, Women's Relief Corps, Sons of Veterans, or any other organization for the benefit of the soldiers and sailors who took part in the Civil War, or their descendants, or organized for the purpose of perpetuating their memory. See 106 O. L. 456.

In the year 1925, the legislature passed supplemental sections, including section 14849-5, to which you made reference, in which provisions were made for the trans-

fer, by the county commissioners to a board of trustees, of full control and management of the memorial and authorizing the latter board to lease any portion of the memorial building and apply the income received therefrom toward the maintenance of such building and authorizing them to receive any proper contributions or donations and to receive and disburse such funds as the county commissioners shall contribute for the equipment and maintenance of said building.

I am unable to find in any of the said sections and supplemental sections any provision which authorizes either the county commissioners or the trustees of the memorial building, to use public funds to pay off a promissory note that was negotiated by one of the donors to the original construction fund. To my mind, the obligation clearly is not a county obligation. While the proceeds of the note may have been and no doubt were used to construct the memorial building, yet the source of the money donated imposes no obligation on the donee thereof to pay the bank who loaned it to the donor.

No specific provision having been made in the statutes to which you refer to take care of such indebtedness and being unable to find any provision in any of the other statutes germane to the subject, I am of the opinion that the county commissioners are without power to transfer any funds to the board of trustees of the memorial for the purpose of paying the promissory note mentioned.

Respectfully,
EDWARD C. TURNER,
Attorney General.

912.

APPROVAL, BONDS OF THE VILLAGE OF FAIRVIEW, CUYAHOGA COUNTY, OHIO—\$167,175.00.

COLUMBUS, OHIO, August 25, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

913.

APPROVAL, BOND OF THE FAIRPORT, PAINESVILLE AND EASTERN RAILROAD COMPANY—\$10,000.00.

COLUMBUS, OHIO, August 25, 1927.

HON. GEORGE F. SCHLESINGER, *Director Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication of recent date enclosing bond furnished to the State of Ohio by the Fairport, Painesville and Eastern Railroad Company in the sum of ten thousand dollars (\$10,000.00). This bond is