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COUNTY COMMISSIONERS—NOT AUTHORIZED TO PAY FEES OF CORONER ACCRUED IN PRIOR YEARS—FEES GOVERNED BY SECTIONS 2856 THROUGH 2866-1a G. C.—APPROPRIATION MADE BY COMMISSIONERS FOR CORONER IN EACH PRIOR YEAR—CORONER FAILED TO FILE COST BILLS IN SUCH PRIOR YEARS—EACH PRIOR APPROPRIATION REVERTED TO GENERAL FUND—SUBSEQUENTLY REAPPROPRIATED AND EXPENDED OR ENCUMBERED FOR OTHER PURPOSES.

SYLLABUS:

County commissioners are not authorized to pay the fees of a county coroner which accrued in prior years, where such fees are governed by Sections 2856 to 2866-1a, General Code, when an appropriation had been made by such commissioners for such coroner in each prior year, but by reason of the coroner's failure to file his cost bills in such prior years each prior appropriation had reverted to the general fund and had subsequently been reappropriated and expended or encumbered for other purposes.

Columbus, Ohio, March 24, 1949

Hon. C. J. Borkowski, Prosecuting Attorney
Jefferson County, Steubenville, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

> "I have been requested by the Board of County Commissioners of Jefferson County, Ohio, to secure your opinion in the following matter:
>
> The duly elected coroner for the years 1945, 1946, 1947 and 1948 failed to file his annual report with the county commissioners, nor did he file cost bills for his first three years until December 1948, when he submitted all his cost bills for his entire four year term. The cost bills were separated for each of the four years.
>
> Each year the commissioners appropriated money for the coroner, and since no fees were paid to the coroner during each of the first three years, the money was returned to the general fund.

Money is available for the year 1948, and since the cost bills are in order, have been approved in accordance with the law for payment.

The question now is: Can the County Commissioners appropriate money in 1949 to pay the fees of the coroner for the years 1945, 1946 and 1947."

In Opinion No. 798, Opinions of the Attorney General for the year 1939, the then Attorney General ruled, as disclosed by the syllabus, as follows:

"County commissioners may not make an appropriation to pay for labor performed during the previous fiscal year."

In the problem there presented, two factors differed from that presented here. The first is that the persons seeking compensation were employees of a county officer, whereas the present question involves a county officer seeking compensation. The second is that the appropriation for the department in which the employees were employed had been exhausted prior to the end of the previous fiscal year, whereas in your case the appropriation made was not used, and reverted to the general fund. As pointed out in said opinion, it is the intent of the budget act that the annual appropriation measure should apply to expenditures within the fiscal year for which it is passed, and that the expenditures of any office should not exceed the amount so appropriated.

In discussing benefits accorded to an agricultural society by Section 9894, General Code, it was held in the case of Jenkins, Aud. v. State, ex rel. Jackson County Agricultural Society, 40 O. App., 312, as stated in the third branch of the syllabus:

"In preparing an appropriation measure under Section 5629-29, General Code, the taxing authority is bound to provide for all those expenditures made imperative by statute."

Although this case did not involve an appropriation for compensation of county officers, the court said in the course of its opinion, at page 315:

"At the time the new budget law was passed there were many sections, of which 9894 was but one, creating fixed and inescapable liabilities of the county, such as salaries of county officers, and it is unthinkable that it was the purpose of the Legislature to make any claims of this character subject to the action or nonaction of the county commissioners. Such a construction

would impose legislative functions on the commissioners and render the act of doubtful constitutionality."

The principle therein set forth had been previously recognized in State, ex rel. Justice v. Thomas, Auditor, 35 O. App., 250, and discussed in Opinion No. 974, Opinions of the Attorney General for the year 1933, and followed in Opinion No. 3681, Opinions of the Attorney General for the year 1941. While the foregoing principle as to the duty imposed upon the taxing authority is not in question here it is the premise upon which the answer must be based.

Section 5625-32, General Code, provides, among other things, as follows:

"* * * At the close of each fiscal year, the unencumbered balance of each appropriation shall revert to the respective fund from which it was appropriated and shall be subject to future appropriations; provided, however, that funds unexpended at the end of such fiscal year and which had theretofore been appropriated for the payment of performance of obligations unliquidated and outstanding, shall not be required to be reappropriated, but such unexpended funds shall not be included by any budget making body or board or any county budget commission in estimating the balance or balances available for the purposes of the next or any succeeding fiscal year."

This section, which is contained in the Uniform Tax Levy Law, commonly called the Budget Law, together with Section 5625-29, would appear to prevent an appropriation by the taxing authority for the purpose of paying compensation to a county officer for any previous year. I am not of the opinion, however, that such a broad conclusion could be reached in every instance. The question of the effect of the reversion of unencumbered balances of funds appropriated for the common pleas court of Marion county, Ohio, was raised in the Justice case, supra, and the court at page 258 say:

"We are of the opinion that the reverting of the unincumbered balances would not in itself prevent the granting of the relief prayed for by the relator. It is probable that the balance of more than $200, which the record disclosed was unexpended in the general fund, has reverted to that fund, and that there is no other claim against it."

While the foregoing action involved the question of an appropriation for a county employee and did not involve the question of the authority

or power of the taxing authority to appropriate money for a county officer's salary for a prior fiscal year, it indicates, when taken in connection with the duty imposed upon the county commissioners that they must provide for the fixed salaries of such officers that in certain situations such appropriations may be authorized.

From your letter it is assumed that the money appropriated for the years 1945, 1946 and 1947 for the coroner, after reverting to the general fund, in each instance was reappropriated and no longer remains unexpended or unencumbered.

Also, from the facts contained in your letter it is apparent that the coroner therein referred to took office prior to and was duly elected incumbent on the effective date of Section 2855-3, General Code. His duties and compensation were therefore governed by Sections 2856 to 2866-1a, inclusive, of the General Code which were in force prior to the enactment of Senate Bill No. 92 by the 96th General Assembly. Said Senate Bill repealed all of the above mentioned sections which related to the compensation of a coroner and enacted said Section 2855-3. However, this action of the legislature did not affect the compensation of a coroner who was in office prior to the effective date of said enactment during the then existing term of office. (1945 O. A. G., No. 469.)

It is further observed that your county is one of less than 400,000 population and by reason thereof, under Sections 2856 to 2866-1a, inclusive, your coroner's compensation was based upon a schedule of fees therein provided which as limited by Section 2866-1 would in no case exceed five thousand dollars or be less than one hundred fifty dollars per annum. The fund provided in the budget for compensation of such officer would therefore be a contingent fund at least to the amount of the excess of one hundred fifty dollars. In addition, certain fees are collected directly by such coroner which must be taken into consideration in computing the amount due him from the county. It is thus observed that the coroner about whom inquiry is made, was not a county officer compensated on a fixed salary provided by law. Upon his failure to account for fees collected by him or demand his costs and fees for the immediately preceding year the county commissioners and budget commission could reasonably assume that the fees collected by him were sufficient to cover all expenses and amounts to which he was legally entitled and thereafter

upon the reversion of the appropriation for the fees and expenses of his office reappropriate the money to other purposes.

Section 2856-5a, General Code, provides as follows:

> "In all counties having a population, according to the last federal census, of less than four hundred thousand the coroner of each county shall report to the county commissioners on the first Monday of September of each year a certified statement of the amount of fees collected by him, under all sections of the General Code, during year next preceding the time of making such statement, naming the party or parties to each case."

Section 2856-6 permits the enforcement of a penalty by way of a civil action brought by the commissioners upon the failure of the coroner to comply with the above provision. It appears that the filing of the report required by Section 2856-5a is not a condition precedent to the payment of compensation to which he may be entitled by law. However, it is my opinion that his failure to account prevented his claims from becoming liquidated and determined as fixed compensation within the meaning of the term "expenditures made imperative by statute" as applied in the Jenkins case, supra.

In conclusion, therefore, and in answer to your question, it is my opinion that the county commissioners would have no authority to appropriate money in 1949 to pay the fees of a county coroner for the years 1945, 1946 and 1947 where such coroner's compensation was governed by a statutory fee schedule and not in accordance with a salary fixed by statute, where an appropriation had been made for such coroner in each of said prior fiscal years but had reverted to the general fund by reason of his failure to file his cost bills and account for the conduct of his office in the years for which compensation is sought by him, and where the unencumbered balances so reverted to the general fund have since been reappropriated, expended or encumbered for other purposes.

Respectfully,

HERBERT S. DUFFY,
Attorney General.