

Such bond with the approval of such officer, indorsed thereon, shall be deposited with the county treasurer and kept in his office."

By the express terms of said section "the compensation of each duly appointed or employed deputy, assistant, bookkeeper, clerk and other employe shall be paid semi-monthly." The language is plain and unambiguous and needs no interpretation.

The act does not amend Section 2989 of the General Code, which provides that the salaries of county officers shall be paid monthly, and does not refer to county officers.

It is therefore my opinion that

(1) House Bill No. 84 passed by the 87th General Assembly applies only to deputies, assistants, bookkeepers, clerks and other employes appointed or employed by county officers; it provides for semi-monthly payment of the salaries of such appointees and employes.

(2) Section 2989 of the General Code relating to the payment of salaries of county officers was not amended by said act.

Respectfully,

EDWARD C. TURNER,
Attorney General.

785.

PUBLIC UTILITIES COMMISSION—ATTORNEY FOR COMMISSION IS AN EMPLOYE OF ATTORNEY GENERAL—SECTION 154-20, GENERAL CODE, CONSTRUED.

SYLLABUS:

1. *The Attorney General's department is not one of the several departments included in Section 154-20, General Code, the term "several departments," as used in that section, applying only to the departments enumerated in Section 154-3, General Code.*

2. *The special counsel appointed by the Attorney General and by him designated under the provisions of Section 497, General Code, "to perform the services and discharge the duties of attorney" to the Public Utilities Commission is an employe of the Attorney General and not an employe in the Department of Commerce.*

3. *The inhibition contained in the last sentence of Section 154-20, General Code has no application whatsoever to any of the employes in the Attorney General's department, including the special counsel designated under Section 497, General Code, to act as attorney for the Public Utilities Commission.*

COLUMBUS, OHIO, July 27, 1927.

HON. WILBUR E. BAKER, *Director of Finance, Columbus, Ohio.*

DEAR SIR:—Some few days ago you invited the attention of the First Assistant Attorney General to Section 154-20, General Code, particularly the last sentence in such section, which I have herein indicated in italics, and asked if this department had considered this section in connection with Opinions Nos. 678 and 687, respectively rendered under dates of June 30 and July 6, 1927.

As you know, the first of the above opinions relates to two contracts entered into by the Attorney General prior to June 30, 1927, providing for certain services to be rendered the State of Ohio in the state-wide Bell Telephone investigation, and holds

that such contracts created present liabilities "of the State to pay the contract price therefor," which liabilities were not "liabilities incurred subsequent to June 30, 1927" as this language is used in Am. S. B. 293, filed May 11, 1927."

The second opinion relates to the power of the Controlling Board with reference to the transfer of certain funds and holds:

"The Controlling Board may not consent to the transfer of funds for the sole purpose of increasing an appropriation made by the General Assembly for a single salary."

Section 154-20, General Code, reads as follows:

"All employes in the several departments shall render not less than eight hours of labor each day, Saturday afternoons, Sundays and days declared by law to be holidays excepted in cases in which, in the judgment of the director, the public service will not thereby be impaired.

Each employe in the several departments shall be entitled during each calendar year to fourteen days leave of absence with full pay. In special and meritorious cases where to limit the annual leave to fourteen days in any one calendar year would work peculiar hardship, it may, in the discretion of the director of the department, be extended. *No employe in the several departments, employed at a fixed compensation, shall be paid for any extra services, unless expressly authorized by law.*" (Italics the writer's.)

This section is part of the Administrative Code passed April 19, 1921 (109 v. 105). The first section of that act reads as follows:

"Chapter 1a of Division 1, Title III, Part First of the General Code, consisting of Sections 154-1 to 154-58, inclusive, and entitled 'Administrative Code,' is hereby enacted, as follows:"

Section 154-1, General Code, which was enacted as a part of the Administrative Code, provides in part that:

"* * * All powers vested in and duties imposed upon the Lieutenant Governor, the Secretary of State, the Auditor of State, the Treasurer of State and the Attorney General by the constitution and the laws shall continue except as otherwise provided by this chapter."

Section 154-2, General Code, also enacted as part of the Administrative Code, reads as follows:

"As used in this chapter:

'Department' means the several departments of state administration enumerated in Section 154-3 of the General Code.

'Division' means a part of a department established as provided in Section 154-8 of the General Code, for the convenient performance of one or more of the functions committed to a department by this chapter.

The phrase 'departments, offices and institutions' includes every organized body, office and agency established by the constitution and laws of the state for the exercise of any function of the state government, and every institution or organization which receives any support from the state." (Italics the writer's.)

It is at once apparent that only one of the two contracts above referred to, namely, the contract entered into with the special counsel designated by the Attorney General under Section 497, General Code, infra, "to perform the services and discharge the duties of attorney" to the Public Utilities Commission, could possibly be affected by the provisions of Section 154-20, supra, for the reason that the other contract was made with an engineer, who was not otherwise an employe of the state. And it is further clear that unless the special counsel in question be an employe of one of the "several departments" of the state "employed at a fixed compensation," as those terms are used in Section 154-20, the inhibition contained in this section would not apply to such special counsel.

It is therefore necessary to determine what is meant by the words "no employe of the several departments," as that phrase is used in the section under consideration; that is to say, whether the Attorney General's department is one of the "several departments" covered by the provisions of Section 154-20.

To ascertain the meaning of the term "department," reference must be had to Section 154-2, supra, which expressly provides that as used in the Administrative Code, the word "department" means the several departments specifically enumerated in Section 154-3, General Code. This section reads as follows:

"The following administrative departments are created:

The department of finance, which shall be administered by the director of finance, hereby created;

The department of commerce, which shall be administered by the director of commerce, hereby created;

The department of highways and public works, which shall be administered by the superintendent of public works as director thereof;

The department of agriculture, which shall be administered by the director of agriculture, hereby created;

The department of health, which shall be administered by the director of health, hereby created;

The department of industrial relations, which shall be administered by the director of industrial relations, hereby created;

The department of education, which shall be administered by the superintendent of public instruction, as director thereof;

The department of public welfare, which shall be administered by the director of public welfare, hereby created;

The director of each department shall, subject to the provisions of this chapter, exercise the powers and perform the duties vested by law in such department."

It will be noted that the Attorney General's department is not included among the departments enumerated in Section 154-3, supra; and that while by Section 154-1, supra, "all powers vested in and duties imposed upon * * * the Attorney General by the constitution and the laws" were to continue except as otherwise provided by the Administrative Code, by the express provisions of Section 154-2, the word "department," as used in the Administrative Code, including Section 154-20, only means the departments enumerated in Section 154-3, supra, provision being further made that to include "every organized body, office and agency established by the constitution and laws of the state" the phrase "departments, offices and institutions" must be used.

From the above, the conclusion seems irrefutable that the Attorney General's department is not included among the "several departments" embraced in Section 154-20, supra, and that the prohibition contained in the last sentence of said section does not apply to an employe of the Attorney General. It therefore becomes necessary to determine if the special counsel designated by the Attorney General to act as counsel

for the Public Utilities Commission is an employe of the Attorney General or an employe of one of the several departments specifically enumerated in Section 154-3, supra.

At the outset all of the departments named in Section 154-3, supra, with the exception of the Department of Commerce, may be eliminated from this discussion, for it is clear that the special counsel designated by the Attorney General to advise the Public Utilities Commission has no connection whatsoever with any of the departments in question unless it be the Department of Commerce.

Section 154-26, General Code, also a part of the Administrative Code, provides *inter alia*:

“The following offices, boards, commissions, arms and agencies of the state government heretofore created by law are hereby abolished:

* * * * *

The secretary of the public utilities commission of Ohio.”

Section 154-39, General Code, also a part of the Administrative Code, provides in part as follows:

“The public utilities commission of Ohio shall be a part of the department of commerce for administrative purposes, in the following respects: The director of commerce shall be ex-officio the secretary of said commission, shall succeed to and perform all of the duties of the secretary of said commission, and shall exercise all powers of said secretary as provided by law; but such director may designate any employe of the department as acting secretary to perform the duties and exercise the powers of secretary of the commission. All clerical, inspection and other agencies for the execution of the powers and duties vested in the said public utilities commission shall be deemed to be in the department of commerce, and the employes thereof shall be deemed to be employes of said department and shall have and exercise all authority vested by law in the employes of such commission. But the public utilities commission shall have direct supervision and control over, and power of appointment and removal of, such employes whose positions shall be designated by the governor as fully subject to the authority of such commission.”

A reading of the above sections at once discloses that the Public Utilities Commission is not by Section 154-39, supra, made entirely a part of the Department of Commerce under the Administrative Code. That section specifies the particulars in which the Commission is made a part of the Department of Commerce. The Director of Commerce is *ex officio* the secretary of the Commission. All clerical, inspection and other agencies for the execution of the powers and duties vested in the Public Utilities Commission are deemed to be in the Department of Commerce, and the employes thereof shall be deemed to be employes of said department. Certainly the special counsel designated by the Attorney General to act as adviser to the Commission is not included within the terms “clerical, inspection and other agencies for the execution of the powers and duties vested in the Public Utilities Commission” and he is not an employe of the Public Utilities Commission.

Moreover, your attention is directed to Section 497, General Code, which provides as follows:

“The attorney general shall be the legal adviser of the commission, but shall designate, subject to the approval of the governor, *one or more of his special counsel*, to perform the services and discharge the duties of attorney to the commission. Such specially designated counsel shall receive such

salary as may be fixed by the commission and approved by the governor, *such salary to be paid in the same manner as that of the members of the commission.*'

By the terms of the above section, neither the Public Utilities Commission, nor the Director of Commerce, has any voice in the selection, appointment or removal of the special counsel under consideration. The Director of Commerce has no control over the fixing of his salary. This is done by the Public Utilities Commission, subject to approval by the Governor, and it is not one of the functions of the Commission placed under the direction of the Director of Commerce. The special counsel is appointed by the Attorney General and serves at his pleasure.

It is clear, therefore, that the special counsel designated by the Attorney General to perform the services and discharge the duties of attorney to the Public Utilities Commission is an employe of the Attorney General's department and not of the Department of Commerce.

For these reasons it is my opinion that:

1. The Attorney General's department is not one of the several departments included in Section 154-20, General Code, the term "several departments," as used in that section, applying only to the departments enumerated in Section 154-3, General Code.

2. The special counsel appointed by the Attorney General and by him designated under the provisions of Section 497, General Code, "to perform the services and discharge the duties of attorney" to the Public Utilities Commission is an employe of the Attorney General and not an employe in the Department of Commerce.

3. The inhibition contained in the last sentence of Section 154-20, General Code, has no application whatsoever to any of the employes in the Attorney General's department, including the special counsel designated under Section 497, General Code, to act as attorney for the Public Utilities Commission.

Respectfully,

EDWARD C. TURNER,

Attorney General.

786.

BILL OF COSTS—INDICTMENT AND RE-INDICTMENT FOR SAME.
CRIME—SECTIONS 2491 AND 13722, GENERAL CODE, DISCUSSED

SYLLABUS:

Where a person charged with a felony was extradited and bound over to the grand jury, indicted at the following session thereof and then re-indicted for the same crime at the next session of the grand jury, so that there were pending against the same defendant two or more indictments for the same criminal act, upon election and trial being had upon one of them resulting in the conviction and sentence of the accused for a felony, the sum paid by the county commissioners for the arrest and return of the convict as authorized by Section 2491, General Code, is, by the terms of Section 13722, General Code, a proper item in the bill of costs made in such prosecution.

COLUMBUS, OHIO, July 27, 1927.

HON. C. LUTHER SWAIN, *Prosecuting Attorney, Wilmington, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of inquiry, the pertinent parts of which read: