

Code, and if the township trustees have the authority to donate money to, or temporarily aid church organizations in, the keeping up of their cemeteries, such authority must be found in or be implied from the sections above enumerated.

Section 3465, General Code, provides for the action to be taken in the event of the abandonment of a public or private burial ground, but contains no provision which might authorize the expenditure of township money for, or empower the township trustees to aid a church organization in the upkeep of a cemetery belonging to it.

Section 3471 provides for the transfer of a public burial ground in a township when the title thereto or control thereof is vested in an association or trustees, or in a religious society, but no mention is made therein as to possible aid by the township to the organization owning such cemetery.

The foregoing sections are the only ones which are pertinent to your inquiry and it can easily be seen there is no authority therein for township trustees to give aid to a church organization for the upkeep of its cemetery.

In view of the conclusions arrived at herein, I do not deem it necessary to consider the possible application of section 6 of Article VIII, which prohibits various governmental subdivisions raising money for, and lending their credit to or in aid of any company, corporation or association.

Where a cemetery is in the control of a church organization and said church organization is about to abandon the cemetery or deed it to the township trustees, I am of the opinion that said township trustees have no authority to temporarily aid, from township funds, such church organization in the care and maintenance of the cemetery.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

3571.

ELECTION LAW—METHOD OF COMBINING PROBATE AND COMMON PLEAS COURTS DISCUSSED.

*SYLLABUS:*

*The question of combining the probate court and the court of common pleas may not be submitted to the electors of a county at the November, 1931, election.*

COLUMBUS, OHIO, September 15, 1931.

HON. CEDRIC W. CLARK, *Prosecuting Attorney, Pomeroy, Ohio.*

DEAR SIR:— Your letter of recent date is as follows:

“There was filed yesterday in the Common Pleas Court of Meigs County a petition reading as follows:

‘To the Honorable Chas. E. Peoples, Judge of the Court of Common Pleas, Meigs County, Ohio:

## PETITION

We, the undersigned electors of Meigs County, Ohio, represent that the County of Meigs, State of Ohio, has a population of less than sixty thousand inhabitants, as determined by the next preceding federal census, and petition the said Hon. Chas. E. Peoples, Judge of the Court of Common Pleas, Meigs County, Ohio, to submit to the electors of Meigs County, Ohio, at the next general election for county officers to be held in November, 1931, the question of combining the Probate Court of Meigs County, Ohio, with the Court of Common Pleas, Meigs County, Ohio. Said combined Court to be known as the Court of Common Pleas, Meigs County, as authorized by Section 7 of Article IV of the constitution of Ohio as amended September 3, 1912, and the laws of Ohio enacted pursuant thereto.

Assuming the number of names on the petition sufficient, can the question be submitted to the electors at the coming November election, in view of the provisions of Section 7, Article IV, Constitution and Section 1604-1, G. C., using the term 'general election for county officers,' and Section 4784, G. C., as amended, providing that general elections for county officers shall be held in the even numbered years?

If the question cannot be submitted at the coming November election could the petition remain on file and the question be submitted at the general election in 1932?"

The filing of a petition to submit to the electors the question of combining the probate court with the court of common pleas in any county having less than sixty thousand population is provided for in Section 7, Article IV of the Constitution. This section reads as follows:

"There shall be established in each county, a probate court, which shall be a court of record, open at all times, and holden by one judge, elected by the electors of the county, who shall hold his office for the term of four years, and shall receive such compensation, payable out of the county treasury, as shall be provided by law. Whenever ten per centum of the number of the electors voting for governor at the next preceding election in any county having less than sixty thousand population as determined by the next preceding federal census, shall petition the judge of the court of common pleas of any such county not less than ninety days before any general election for county officers, the judge of the court of common pleas shall submit to the electors of such county the question of combining the probate court with the court of common pleas, and such courts shall be combined and shall be known as the court of common pleas in case a majority of the electors voting upon such question vote in favor of such combination. Notice of such election shall be given in the same manner as for the election of county officers. Elections may be had in the same manner for the separation of such courts, when once combined."

Your attention is particularly directed to the fact that the foregoing section provides that ten per cent of the electors shall petition the judge of the court of common pleas of such county "not less than ninety days before any general election for county officers," and that "notice of such election shall be given

in the same manner as for the election of county officers." It is obvious that this section requires that the question be voted upon at "such election," which reference is to a general election for county officers.

Under Article XVII, Section 1 of the Constitution, elections for county officers shall be held in the even numbered years.

Section 1604-1, General Code, which section is repealed as of the effective date of the new probate code adopted by the 89th General Assembly, provides as follows:

"Whenever ten percentum of the number of electors voting for governor at the next preceding election in any county having less than sixty thousand population, as determined by the next preceding federal census, shall petition a judge of the court of common pleas of any such county not less than ninety days before any general election for county officers, for the submission to the electors of such county the question of combining the probate court with the court of common pleas of such county, such judge shall place upon the journal of said court an order requiring the sheriff to make proclamation that at the next ensuing general election there shall be submitted to the electors of such county the question of combining the probate court with the court of common pleas of such county. The clerk of courts shall, thereupon, make and deliver a certified copy of such order to the sheriff, and the sheriff shall include notice of the submission of such question in his proclamation of election for the next ensuing general election."

A consideration of this section standing alone might raise the question as to whether or not the electors may vote upon the combining of the probate court and the court of common pleas at the next ensuing general election occurring in an odd numbered year. Such a construction would render meaningless the requirement that the petition be presented not less than ninety days before any general election for county officers, because it would follow that if a petition were presented thirty days or even ten days before the November, 1931, election, such petition would be presented more than ninety days before the next general election for county officers occurring in 1932, and the argument would be made that the question must nevertheless be presented at the November, 1931, election. It is unnecessary to discuss further this possible construction of Section 1604-1, *supra*, for the reason, as hereinabove indicated, that the Constitution itself requires the submission of the question at a general election for county officers which shall be held in an even numbered year.

I note that in the form of the petition in your letter, it is provided that the question shall be submitted at "the next general election for county officers to be held in November, 1931." Neither the Constitution nor the statute requires that the petition state when the question shall be submitted. This matter is provided by law and is not discretionary with the petitioners. The statement in this regard is, of course, inconsistent since there is no general election for county officers in November, 1931. Of course, in the event the question had already been submitted to the electors and voted upon pursuant to the filing of this petition, it is very possible that the courts would hold the election valid on the ground that the portion relating to when the question should be submitted is unauthorized and surplusage. But it could nevertheless be contended, with perhaps considerable force, that the persons who signed this petition did so on

account of being desirous of having the question submitted at the November, 1931, election and had they known that the question could not be submitted until the November, 1932, election, they would not have signed the petition. Under the circumstances, it is my judgment that a new petition should be prepared and circulated in the event it is desired to vote upon this question at the November, 1932, election.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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3572.

APPROVAL, BONDS OF NAPOLEON VILLAGE SCHOOL DISTRICT,  
HENRY COUNTY, OHIO, \$10,000.00.

COLUMBUS, OHIO, September 15, 1931.

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

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3573.

APPROVAL, BONDS OF SUGAR CREEK RURAL SCHOOL DISTRICT,  
ALLEN COUNTY, OHIO—\$50,000.00

COLUMBUS, OHIO, September 15, 1931.

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

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3574.

SPECIAL CONSTABLE—UNAUTHORIZED TO PATROL PUBLIC HIGH-  
WAYS—AUTHORITY LIMITED.

*SYLLABUS:*

*A special constable cannot be appointed for the general purpose of patrolling the public highways to enforce traffic laws. The duties of a special constable when appointed under section 3331 of the General Code are limited to the particular case in which he is appointed.*

COLUMBUS, OHIO, September 15, 1931.

HON. FRED W. EVERETT, JR., *Prosecuting Attorney, Jackson, Ohio.*

DEAR SIR:—In your recent communication you present the following inquiry:

“Can a justice of the peace appoint a special constable for the sole purpose of watching the State highways for speed law violators? There is sort of an epidemic of drunken and reckless drivers in this county