

264.

APPROVAL, BONDS OF EAST SPARTA VILLAGE SCHOOL DISTRICT,
STARK COUNTY, OHIO, \$55,789.20.

COLUMBUS, OHIO, March 31, 1927.

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

265.

APPROVAL, BONDS OF CITY OF WELLSVILLE, COLUMBIANA COUNTY,
OHIO, \$12,500.00.

COLUMBUS, OHIO, March 31, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

266.

COUNTY TREASURER—IS NOT ENTITLED TO A PER CENT OF DE-
LINQUENT PERSONAL TAXES—EMPLOYMENT OF TAX COLLECTORS.

SYLLABUS:

1. *Neither a county treasurer nor his deputy is entitled to a per cent in addition to the regular salary, on the collection of delinquent personal taxes.*
2. *Under Section 5696, General Code, upon authorization by the county commissioners, the county treasurer may employ collectors to collect taxes. Before such authorization may be given, the county commissioners must first cause the delinquent list to be read publicly as provided in such section. The county commissioners must definitely prescribe the compensation of such collectors before collections are made, and that duty is not performed by prescribing that the compensation shall not exceed a certain amount, or a certain per centum.*
3. *There is no statutory inhibition against the deputy treasurer resigning and receiving the appointment to collect the delinquent personal taxes.*

COLUMBUS, OHIO, April 1, 1927.

HON. EARL D. PARKER, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

"Is the County Treasurer or his deputy entitled to a per cent on the collection of delinquent personal taxes which have accumulated over a period of ten years prior to his induction into office. If so what would be the maximum per cent and who has the power to authorize the Treasurer or his deputy to proceed to collect?"

Should your answer to the first proposition be in the negative, could the Deputy Treasurer resign during the period of the collection of taxes and receive the appointment as special agent to collect the delinquent personal taxes?"

The county treasurer was formerly entitled to a per cent for the collection of delinquent personal taxes, for his own personal use. Section 2977, General Code, provides:

"That all fees, costs, percentages, penalties, allowances and other perquisites collected or received by law for compensation for services by a county auditor, county treasurer * * *, shall be so received and collected for the sole use of the treasury of the county for which they are elected and shall be held as public moneys belonging to such county and accounted for and paid over as such as hereinafter provided."

Section 2978 provides that:

"Each * * *, treasurer, shall charge and collect the fees, costs, percentages, allowance and compensation, allowed by law, and shall give to the person making payment thereof, an official receipt in manner and form as may be prescribed by the Bureau of Inspection and Supervision of Public Offices."

Section 2983 provides that:

"On the first business day of each month, and at the end of his term of office, each of such officers shall pay into the county treasury, to the credit of the general county fund, on the warrant of the county auditor, all fees, costs, penalties, percentages, allowances and perquisites of whatever kind collected by his office during the preceding month or part thereof for official services, provided that none of such officers shall collect any fees from the county; and he shall also at the end of each calendar year, make and file a sworn statement with the county commissioners, of all fees, costs, penalties, percentages, allowances and perquisites of whatever kind shall have been due in his office and unpaid for more than one year prior to the date such statement is required to be made."

Section 2989 provides:

"Each county officer hereinafter named shall receive out of the general county fund the annual salary hereinafter provided, payable monthly upon the warrant of the county auditor and such additional compensation of salary as may be provided by law."

Section 2991 provides the amount of salary each county treasurer shall receive. In the case of *Teale vs. Stillinger*, 95 O. S., 129, it was held that:

"A county treasurer is prohibited by statute from receiving any compensation for the performance of official duty in excess of that provided by

law, and he cannot by the use of the public office and the public records, stationery and data, do indirectly during his term of office what he is prohibited from doing directly."

Section 2996, General Code, provides that:

"Such salary and compensation shall be instead of all fees, costs, penalties, percentages, allowances and all other perquisites of whatever kind which any of such officials may collect and receive."

The county treasurer is therefore prohibited from receiving for his own use a per cent on the collection of delinquent personal taxes.

Section 2981 provides that:

"Such officer may appoint and employ necessary deputies, * * * for their respective offices, fix their compensation, and discharge them, and shall file with the county auditor certificates of such action. When so fixed, the compensation of such duly appointed or employed deputy, * * * shall be paid monthly from the county treasury upon the warrant of the county auditor."

It is noted that the compensation of the deputy county treasurer is a certain amount to be fixed by the county treasurer and to be paid from the county treasury. As in the case of the treasurer, this amount is in full for all services performed for the county as such deputy county treasurer and no provision is made for the collection of fees for the personal use of said deputy county treasurer for his services as such.

Said deputy county treasurer is therefore not entitled to a per cent on the collection of delinquent personal taxes.

Your next inquiry is, as to whether the deputy county treasurer could resign during the period of collection of taxes and receive the appointment as special agent to collect the delinquent personal taxes.

Section 5696 G. C. reads:

"The county commissioners at each September session, shall cause the list of persons delinquent in the payment of personal property to be publicly read. If they deem it necessary, they may authorize the treasurer to employ collectors to collect such taxes, or part thereof, prescribing the compensation of such collector which shall be paid out of the county treasury. All such allowances shall be apportioned ratably by the county auditors among all the funds entitled to share in the distribution of such taxes."

This section provides that if the county commissioners deem it necessary they may authorize the treasurer to employ collectors to collect delinquent taxes. As a condition precedent to this action, however, said commissioners must first cause the delinquent list to be properly read as provided in this section. Board of County Commissioners vs. Arnold, 65 O. S. 479.

Under this section, upon authorization by the county commissioners, the county treasurer may employ collectors to collect taxes. Such appointment is made by the treasurer, and not by the commissioners; and the authority of the collector ceases with the expiration of the term of the county treasurer. Brady vs. French, 6 O. N. P. 122. The county commissioners must definitely prescribe the compensation of such collectors, before collections are made; and the Supreme Court of Ohio has held that "that duty is not performed by prescribing that the compensation shall not exceed a certain amount, or a certain per centum." Board of County Commissioners of Hamilton County vs. Arnold, supra.

There is no statutory inhibition against the deputy treasurer resigning during the period of collection of taxes and receiving the appointment to collect the delinquent personal taxes. However, I express no opinion on the policy of making such appointment.

You are therefore advised that it is my opinion that neither a county treasurer, nor his deputy, is entitled to a per cent in addition to the regular salary, on the collection of delinquent personal taxes, and that there is no statutory inhibition against the deputy treasurer resigning and receiving the appointment to collect the delinquent personal taxes.

Respectfully,

EDWARD C. TURNER,
Attorney General.

267.

SUPERINTENDENT OF SCHOOLS—SECTION 7689, GENERAL CODE, RELATIVE TO CHANGING THE TIME OF THE SCHOOL YEAR, HAS NO EFFECT ON SECTION 7702, GENERAL CODE, RELATIVE TO THE TIME FOR EMPLOYING SUPERINTENDENT.

SYLLABUS:

The amendment of General Code Section 7689 as found in 111 O. L. 371, changing the time of the school year in Ohio, has no effect on the provisions of Section 7702 of the General Code with reference to the time for employing the superintendent of schools.

COLUMBUS, OHIO, April 1, 1927.

HON. VERNON M. RIEGEL, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, which is as follows:

“Your opinion is desired upon the following point:
Section 7702 G. C. reads as follows:

“The board of education in each city school district at a regular meeting, between May 1st and August 31st, shall appoint a suitable person to act as superintendent of the public schools of the district, for a term not longer than five school years, beginning within four months of such appointment and ending on the 31st day of August.

Provided, that in the event of a vacancy occurring in the office of the superintendent prior to May 1st, the board of education may appoint a superintendent for the unexpired portion of that school year.

Provided, also, that if the vacancy occur through resignation or removal for cause, the superintendent thus resigning or removed shall be ineligible for reappointment to such office until after the reorganization of the board of education following the next general election of members of such board.’

A school year is defined by Section 7689 G. C. as beginning on the first day of July of each calendar year and closing on the 30th day of June on the succeeding calendar year. What effect does this definition of the school year have upon the time for employing a superintendent as designated in Section