

1247.

CONSTABLES—NUMBER TO BE ELECTED IS UNDER DIRECTION OF TOWNSHIP TRUSTEES.

SYLLABUS:

1. Under the provisions of Section 3327, General Code, the board of township trustees is authorized to direct the number of constables to be elected biennially in each township. When the number of constables is once directed by the board of township trustees such direction will continue for election purpose unless and until otherwise directed by said board.

2. The number of justices of the peace in a given township may properly be considered by the board of township trustees in arriving at the number of constables to be elected, but that fact is not necessarily controlling.

COLUMBUS, OHIO, November 9, 1927.

HON. HERMAN F. KRICKENBERGER, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

"We are having a controversy in this county over the election of constables in one of our townships. In order to definitely settle the matter I desire an opinion from your office construing Section 3327 of the General Code, which provides for the election of constables.

This section provides that such number of constables as directed by the township trustees shall be elected biennially, and in this connection I would like to know, first, whether it is thereby made the duty of the trustees to direct the number of constables to be elected each time or whether the same number shall be elected each time after the trustees have once passed on the matter; second, whether the number of justices of the peace in a township shall affect in any way the number of constables to be elected; and, third, with reference to the time of election, just when and in what manner shall the trustees direct the number of constables to be elected?

If your department will give me an opinion on the above questions, I assure you the same will be greatly appreciated."

Section 3327, General Code, provides as follows:

"Such number of constables as directed by the trustees shall be elected, biennially, in each township who shall, each, hold his office for a term of two years, commencing on the first day of January next after his election."

Former Section 3271, General Code, among other things provided:

"On the last Monday of December in each year, the trustees shall meet at the place for holding township meetings, and * * *. At such meeting they shall also fix and give notice of the number of constables to be elected for the township."

This section was repealed May 17, 1915, the repeal being found in 106 Ohio Laws at page 664.

Section 3329, General Code, providing for the filling of a vacancy in the office of constable is as follows:

"When, by death, removal, resignation, or non-acceptance of the person elected, a vacancy occurs in the office of constable, or when there is a failure to elect, the township trustees shall appoint a suitable person to fill such vacancy until the next biennial election for constable, and until a successor is elected and qualified. If there is no constable in a township, the constable of an adjoining township in the county shall serve any process that a constable of such township is authorized by law to serve."

In Opinions of the Attorney General for 1916, Vol. II, page 1703, this Department held:

"After the number of constables have been designated and elected according to law in any township and no vacancy has occurred, in that office, there is no authority in the township trustees to appoint an additional constable or constables for any purpose."

Prior to the repeal of the above mentioned Section 3271, General Code, it was the duty of the township trustees at their meeting "on the last Monday of December in each year" to "fix and give notice of the number of constables to be elected for the township," but since the repeal of said section there is no time mentioned at which this duty is to be performed by the trustees. The time, however, at which the trustees make the designation is not material.

Section 3327, General Code, provides:

"Such number of constables as directed by the trustees shall be elected, biennially, etc."

It would seem, therefore, that the trustees are still authorized to direct the number to be elected, and while the time is not specific as to when that direction shall be made since the repeal of Section 3271, General Code, it is my opinion it is sufficient if the direction as to the number is made by the trustees a reasonable time before the date at which candidates are required to make their nominations.

You also inquire whether it is the duty of the trustees to direct the number of constables to be elected each time, or whether the same number shall be elected each time after the trustees have once passed on the matter.

In answer to that question it is my opinion that when the trustees so direct the number to be elected, that direction will continue for election purposes until otherwise changed by the board of township trustees.

You inquire whether the number of justices of the peace in the township shall affect in any way the number of constables to be elected.

It is my opinion that the number of justices of the peace in a given township may properly be considered by the board of township trustees in arriving at the number of constables to be elected, but the number of the justices of the peace does not necessarily control the number of constables to be elected.

Respectfully,
EDWARD C. TURNER,
Attorney General.