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1. COUNTY AUDITOR—ABSENT—DEPUTY AUDITOR AUTHORIZED TO SERVE ON OR SIT AS MEMBER OF COUNTY BOARD OF REVISION.
2. COUNTY COMMISSIONERS, BOARD OF—DULY ELECTED PRESIDENT—ONLY COMMISSIONER AUTHORIZED TO SERVE OR ACT ON COUNTY BOARD OF REVISION—SECTION 5580 G. C.

SYLLABUS:

1. A deputy auditor is authorized to serve on or sit as a member of a county board of revision in the absence of the county auditor.

2. Under the provisions of Section 5580, General Code, the duly elected president of the board of county commissioners is the only commissioner who is authorized to serve or act on a county board of revision.

Columbus, Ohio, May 22, 1944

Hon. J. Donald Kincaid, Prosecuting Attorney  
Zanesville, Ohio

Dear Sir:

Your request for my opinion reads:

"In connection with the Board of Revision of Muskingum County, Ohio, which is planning to act upon appeals pursuant to the real estate reappraisal for the purpose of the first half 1943 taxes, question has arisen as to whether a deputy auditor may sit and act as a member of such Board in place of the elected auditor, who was recently inducted into the armed forces, and also as to whether the vice-president of the Board of County Commissioners may sit and act on the County Board of Revision in place of the president of the Board, who is ill and physically unable to meet or act.

Your opinion at your very earliest convenience will be greatly appreciated, inasmuch as the Board of Revision is now called upon to act as such, and the deputy auditor and also the vice-president of the Board of County Commissioners are both willing to serve, unless prohibited by law of doing so."

Your first question, which relates to the right of a deputy county auditor to act in place of the duly elected county auditor on a county board of revision, has been the subject of consideration by former Attorneys General. It was heretofore held, as disclosed by the syllabus of the Opinions of the Attorney General for 1925, at page 406, that:

"A deputy treasurer or a deputy auditor may not act in the place of a treasurer or auditor as members of a county budget commission or the county board of revision."

This conclusion was predicated on the fact that the county auditor exercised a quasi-judicial function or a duty requiring the exercise of judgment or discretion as distinguished from the performance of a ministerial act.

In 1931 the then Attorney General was asked for an opinion as to whether the same person was authorized to hold the office of auditor of a city and deputy auditor of the county in which the city was located. In reaching the conclusion that the same person could not do so, the Attorney General for that year had occasion to discuss the aforementioned 1925 opinion. It was his view the offices were incompatible for the reason that the deputy auditor was authorized to sit as a member of the budget commission in the absence of the auditor which thus, in effect, reversed in part the aforesaid 1925 opinion. After discussing certain reported cases and various statutory enactments, it was then said at page 1419 of the decision that:

"A consideration of the foregoing principles leads to the

conclusion that the 1925 opinion, insofar as it prohibits a deputy auditor from performing the duties of the county auditor on the county budget commission, is not tenable since there is no designated method to be followed in case of the inability on the part of the county auditor to serve on the county budget commission. \* \* \*

A question then subsequently arose as to the right of the chief deputy of the county treasurer to act as a member of the budget commission and the matter was submitted to the Attorney General for his consideration. In Opinions of the Attorney General for 1934, at page 1721, it was held, as disclosed by the syllabus, to-wit:

“The chief deputy county treasurer may, in the absence of the treasurer, serve as member of the county budget commission. Opinions of Attorney General for 1931, Vol. III, page 1417, affirmed.”

An analysis of the 1934 opinion indicates the then Attorney General was of the view that the status of the deputy of a county treasurer was no different in law than that of a deputy of the county auditor with respect to his right to act as a member of the commission in question.

In the light of the aforementioned 1931 and 1934 opinions and as the result of an analysis of the law, I am therefore of the view that although Section 5580, General Code, specifies that the county auditor shall be a member of a county board of revision, a deputy auditor is authorized to act as a member of such board in the place of the county auditor while the latter is absent and unable to perform his duties. This conclusion is, of course, contrary to that announced in Opinions of the Attorney General for 1925 at page 400 which was heretofore overruled in part.

I turn now to your second question wherein you ask as to the authority of the vice-president of the board of county commissioners to serve on the board of revision in the place of the president.

In approaching this question I am not confronted with the matter of the authority of a deputy to serve in the place of the president since a fellow board member of such president could hardly be regarded as his deputy. In fact I find no authority in law for a county commissioner to appoint a deputy commissioner.

I also take cognizance of the fact that you have referred to a *vice-president* of the board of county commissioners. While I need not here specifically to decide the question I am of the opinion that no statutory authority exists for the election of a so-called vice-president. Possibly for the purpose of administering its own affairs the board of county commissioners has seen fit to designate one of the members as vice-president. However, unless the authority exists by law to create such office, the person holding the same has no legal status in so far as it may involve his right to serve as a member of a board of revision. I call your attention to Section 2400, General Code, which reads:

“The board of county commissioners shall organize on the first Monday of January of each year, by the election of one of its members as president for a term of one year. The member so elected shall preside at all regular and special sessions thereof. *If the position of president becomes vacant during the year, the board shall select one of its members to preside.*”

(Emphasis added.)

It is apparent to me by reason of the language above emphasized, the election of a vice-president is not contemplated thereunder.

It would appear that the answer to your aforesaid second question must depend upon the interpretation to be placed upon Section 5580, General Code, to which reference has heretofore been made and which I now quote, viz.:

“The county treasurer, county auditor and the *president* of the board of county commissioners of each county shall constitute a county board of revision.”

(Emphasis added.)

While not precisely in point, I feel that an opinion rendered by one of my predecessors should be referred to as it sheds some light on the question here involved. It was held in Opinions of Attorney General for 1927, at page 210, as disclosed by the syllabus thereof, as follows:

“The member of the board of county commissioners authorized to act as a member of the county board of revision is the present elected, qualified and acting president of the board of county commissioners.”

Reference was made therein to an opinion which had been rendered

shortly theretofore and found in Opinions of the Attorney General for 1927, at page 39, the syllabus of which reads:

“Under the provisions of Section 5580, G. C. and Section 5592, G. C., when a president of the board of county commissioners ceases to be such president, his office as a member of the county board of revision also ceases, and upon the election of a new president of the board of county commissioners, he thereby becomes, ipso facto, a member of the county board of revision.”

In specific answer to your inquiries, it is therefore my opinion that:

1. A deputy auditor is authorized to serve on, or sit as a member of a county board of revision in the absence of the county auditor.
2. Under the provisions of Section 5580, General Code, the duly elected president of the board of county commissioners is the only commissioner who is authorized to serve or act on a county board of revision.

Respectfully,

THOMAS J. HERBERT

Attorney General