

7038

1. TOWNSHIP PARK -- ESTABLISHED BY VOTE OF ELECTORS OF TOWNSHIP, INCLUDING THOSE WHO RESIDED IN MUNICIPALITY LYING WITHIN TOWNSHIP -- SUBSEQUENT INCORPORATION INTO VILLAGE OF REMAINING PORTION OF SUCH TOWNSHIP WILL HAVE NO EFFECT ON BOARD OF PARK COMMISSIONERS APPOINTED TO ESTABLISH AND MANAGE SUCH PARK -- BOARD HAS POWER TO LEVY TAXES ON ALL PROPERTY IN SUCH TOWNSHIP -- SECTIONS 3423, 3415 ET SEQ., G. C.
2. ALL AREA OF TOWNSHIP INCORPORATED INTO TWO MUNICIPALITIES -- DOES NOT AFFECT EXISTENCE OR OFFICIAL ORGANIZATION OF TOWNSHIP -- TAXES LEVIED OR TO BE LEVIED FOR TOWNSHIP PURPOSES WILL BE COLLECTED AND PAID INTO TOWNSHIP TREASURY AS PROVIDED BY LAW.
3. VILLAGE -- INCORPORATED -- FIRST ELECTION OF OFFICERS HELD -- VILLAGE COUNCIL MAY PROCEED TO FIX COMPENSATION OF OFFICERS -- WITHIN LIMITATION OF SECTION 4219 G. C. -- MAY FIX COMPENSATION, MEMBERS OF COUNCIL -- ACTION WILL NOT VIOLATE PROHIBITION OF SECTION 4219 G. C. AGAINST INCREASE OF SALARY OF OFFICER DURING HIS TERM.
4. DISCUSSION -- RIGHT OF MUNICIPAL COUNCIL TO HOLD MEETINGS OUTSIDE OF CORPORATE BOUNDARIES.

SYLLABUS:

1. Where a township park has been established pursuant to the provisions of Section 3415 et seq. General Code, by vote of the electors of the township including those residing in a municipality lying within such township, the subsequent incorporation into a village of the remaining portion of such township will have no effect on a board of park commissioners appointed for the establishment and management of such park, or on the power of such board to levy taxes as provided in Section 3423 General Code, on all the property in such township.

2. The fact that all the area of a township has been incorporated into two municipalities does not in any way affect the existence or official organization of the township and taxes levied or to be levied for township purposes will be collected and paid into the township treasury as provided by law.

3. When a village has been incorporated and the first election of officers has been held, the village council so elected may proceed to fix the compensation of the officers and within the limitation of Section 4219 General Code, may fix the compensation of the members of council, and such action will not be a violation of the prohibition of said Section 4219 against increasing the salary of an officer during his term.

4. Right of municipal council to hold its meetings outside the corporate boundaries, discussed.

Columbus, Ohio, July 26, 1944

Hon. Roland Pontius, Prosecuting Attorney
Jefferson, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"All of the territory within the limits of Conneaut Township, and situated outside of Conneaut City, which is located within the territorial limits of Conneaut Township, has been organized into a village known as Lakeville. There are certain questions which have arisen as the result of the incorporation of this area into a village and we would like your official opinion.

1. Some years ago a township park was created in pursuance of Section 3415 of the General Code, the question of the establishment of such a park having been submitted to all of the electors residing in Conneaut City and Conneaut Township. A Board of Park Commissioners was appointed and a levy has since been made on all of the property within Conneaut City and Township, for the purpose of maintaining the park which was established. We assume that the board which was so established, will continue to function and that a levy will be made for park purposes upon all of the taxable property within the limits of Conneaut City and of Lakeville. Will you please advise whether or not our assumption is correct?

2. Will you kindly advise what disposition is to be made of the money collected as taxes levied upon the taxable property in Conneaut City for the benefit of Conneaut Township, such taxes having been levied for the year 1943 and previous years?

3. A levy was made upon the taxable property within Conneaut Township for the years 1943 and prior thereto for road purposes. At least a part of this levy will be collected with the taxes for the last half of 1943. Will you please advise what disposition is to be made of the funds so collected?

4. The area embraced within the new municipality known as Lakeville, constituted Conneaut Township on tax day in April, 1944. At the time the budget is prepared for Conneaut City for the tax year 1944, should any tax upon city property be levied for the benefit of Conneaut Township?

5. We have before us Opinion No. 6848, issued by your office under date of April 22, of this year. The question has arisen as to whether or not the Judge of the Municipal Court of Conneaut will have jurisdiction to dispose of cases which are prosecuted under Ordinances of the Village of Lakeville, and if so, the disposition to be made of fines which are imposed and collected in pursuance of its findings?

6. Conneaut City and old Conneaut Township were the joint owners of the town hall located within the territorial limits of Conneaut City. The township was the owner of an undivided $\frac{2}{3}$ interest in this property. The question has now arisen as to whether or not, by ordinance, the council of the Village of Lakeville may provide for holding its regular meetings in the town hall.

7. The question has arisen as to the manner in which the salaries of the various officers of the newly created village may be fixed. We have found nothing in the Code except Sections 4213 and 4219, and both of these would indicate that the salaries of the village officers are to be fixed sometime prior to their election to office."

Your first five questions seem to suggest the proposition that the incorporation of the Village of Lakeville, comprising all of the territory of Conneaut Township outside of the city of Conneaut has effected some change in, or perhaps has abolished the Township of Conneaut. I do not consider that the incorporation of the Village of Lakeville has had any such effect.

In my opinion of April 22, 1944, No. 6848, relative to the effect of the incorporation of said village upon the jurisdiction of the Municipal Court of Conneaut, I called attention to Section 3512 of the General Code, which provides as follows:

"When the corporate limits of a city or village become identical with those of a township, all township offices shall be

abolished, and the duties thereof shall thereafter be performed by the corresponding officers of the city or village, except that justices of the peace and constables shall continue the exercise of their functions, under municipal ordinances providing offices, regulating the disposition of their fees, their compensation, clerks and other officers and employes. Such justices and constables shall be elected at municipal elections. All property, moneys, credits, books, records and documents of such township shall be delivered to the council of such city or village. All rights, interests or claims in favor of or against the township may be enforced by or against the corporation."

It will be observed from an examination of the above quoted section, that it applies only when the corporate limits of a *city or village* become identical with those of a township. It is obvious that the legislature enacted that statute in recognition of the fact that where the territory of a township was identical with that of a municipal corporation there could be no purpose in having two sets of officers administering the affairs of the subdivision and therefore all township offices excepting those of justices and constables were abolished and their duties are to be performed by municipal officers. Plainly, that reason does not exist where the entire territory of a township becomes incorporated into *two or more* municipal corporations and obviously it would not be practicable for the officers and council or either one of such municipalities to take over the government of the entire township. Accordingly, it seems clear to me that the existence of Conneaut Township has been in no wise affected, and the entire township, including the city of Conneaut and the Village of Lakeville, is still subject to control as a township by the officers who are provided by law for all townships of the state. The city of Conneaut after its incorporation continued to be a part of the township and the Village of Lakeville after its incorporation also continues to be a part of the township. Taxes which have heretofore been levied by the township authorities on property covered by the city of Conneaut and the Village of Lakeville together with taxes hereafter levied by the township authorities, are to be collected and disposed of as provided by law. Electors of the city of Conneaut are entitled to and presumably do vote for the election of township officers. Electors residing in the present Village of Lakeville enjoy the same privileges.

It was held in the case of *State, ex rel. v. Ward*, 17 O. S. 543:

"On the organization of a city of the second class divided into wards, the boundaries of which city are not co-terminous

with those of any township, the territory within such city does not cease to be a part of the township or townships within the limits of which it is situated.”

The court in its opinion, at page 546, said:

“Neither as a matter of theory or practice, is there any necessary difficulty in the existence and harmonious working of a civil township organization, and, at the same time, of a city organization within the limits of such township, or within the limits of more than one township; and the statutes nowhere provide, either expressly or by just implication, that, on the organization of a city within the limits of a township or townships, the territory within the limits shall cease to be a part of the township or townships from which the same was taken. But there are clear indications of a contrary legislative intent.”

Referring then to your several inquiries, and in answer to your first question, it appears that a township park was at some time in the past created pursuant to Section 3415 of the General Code, the question of the establishment of such park having been submitted to all the electors residing in Conneaut Township, including the city of Conneaut; a board of park commissioners was appointed and a tax levy was made by such board on the property within the township, including the city of Conneaut. Such board of park commissioners appointed pursuant to that proceeding presumably will continue to function and it may from time to time make a levy upon all the taxable property within the limits of the township for the maintenance of the park. It is given that authority by Section 3423 General Code, which provides as follows:

“To defray the expenses of purchasing, appropriating and improving lands for park purposes and maintaining them as a free public park, the township park commissioners may levy, each year, a sufficient tax, not to exceed one mill on each dollar of valuation on all real and personal property, *including property within any municipal corporation within the limits of the township*, over and above all other taxes and limitations thereon, authorized by law, unless the question of increasing such levy is submitted to and approved by a vote of the electors of such township, at a general or township election. Such vote shall be taken on the order of the township park commissioners, specifying the additional levy they desire to make and the purpose for which it is desired.”

(Emphasis added.)

Your second inquiry relates to the disposition to be made of money

collected as taxes levied upon the taxable property of Conneaut city for the benefit of Conneaut Township in the year 1943 and previous years. Section 2689 General Code, provides for the payment to the township treasurer (now the township clerk) of the proceeds of special tax levies and other moneys in the county treasury belonging to the township. There having been no change in the organization of Conneaut Township, the statutes relating to the disposition of funds levied by or for the township are to be followed in distributing such monies.

Your third question relates to tax levies on the property of the township for the year 1943 and prior thereto, for road purposes. Assuming that you have reference to taxes levied by the township trustees, it would seem clear that for the same reasons heretofore mentioned the proceeds of such levies when collected should be paid into the treasury of the township and placed to the credit of its road fund.

In your fourth question it is stated that "the area embraced within the new municipality known as Lakeville, constituted Conneaut Township on tax day in April, 1944." As I have already pointed out, this statement seems to be an assumption without basis. The area embraced within the present village of Lakeville did constitute a part of Conneaut Township and still does, and since the boundaries and identity of the township have not been changed the necessary township taxes will be levied by the proper taxing authorities upon the property of the entire area of the township, including the city of Conneaut and the village of Lakeville. But I do not see that these township taxes have any place in the tax budget for the city of Conneaut. The powers of the city as to levying taxes are confined to its own municipal affairs. General Code 5625-3 et seq.

Relative to your fifth inquiry as to the jurisdiction of the Municipal Court of Conneaut over offenses arising in the village of Lakeville, we must refer to the statutes creating and defining the jurisdiction of that court. They are contained in Sections 1579-1177 to 1579-1231. Section 1579-1183 General Code, defining the jurisdiction of the court reads in part as follows:

"Said municipal court herein established shall have jurisdiction of any offenses under any ordinance of the city of Conneaut, Ohio, or any misdemeanor committed within the limits of the city and township of Conneaut, Ashtabula county, Ohio, to hear and determine the same and impose the prescribed pen-

alty; * * * and in addition thereto said municipal court shall have ordinary civil jurisdiction within the limits of said city and township of Conneaut, in said county of Ashtabula, and state of Ohio, in the following cases: * * *”.

By another section of the act, Section 1579-1231, it is provided:

“Upon the qualification of the municipal judge, as provided for in section 2 hereof, the jurisdiction of the criminal court of the city of Conneaut, the mayor of the city of Conneaut, or any person or officer exercising the jurisdiction of a mayor in the city of Conneaut, and of all justices of the peace in said city of Conneaut and Conneaut township, Ashtabula county, Ohio, in all civil and criminal matters shall cease, and no judge of the criminal court, justice of the peace or constable shall thereafter be elected in said Conneaut township.”

At the time this act was passed, there was, of course, no village of Lakeville and therefore no possible reference to any jurisdiction over offenses arising under ordinances of such village and no provision abolishing the mayor's court of such village. Accordingly, as the act now stands, the Conneaut Municipal Court could not have jurisdiction over violations of ordinances of the village. If it is desired to extend the jurisdiction of the court in this respect and to do away with the criminal jurisdiction of the mayor of the village, that would have to be done by an amendment to the Conneaut Municipal Court Act.

Your sixth question, relative to the power of the village of Lakeville to provide by ordinance for holding its regular meetings in the town hall located within the city of Conneaut, raises a question which is difficult to decide in view of the fact that there seems to be an absolute want of adjudication on the subject so far as I can find, either in Ohio or elsewhere in the United States. Apparently, if a village council can hold its regular meetings outside of the corporate limits it would presumably keep its records outside of the village and probably establish the various municipal offices in the same place. It would appear that an attempt to locate the seat of a municipal government in some other municipality contiguous thereto or otherwise, would have precipitated litigation which would appear in the reported cases, and the fact that there seem to be no reported decisions touching on the subject strengthens my feeling that it is generally recognized as implicit in the organization of local governmental subdivisions such as villages and

cities that their official acts are to be done within their corporate limits.

The only case which I have noted in which this question appears to have been raised is the case of *Anderson v. Vancouver*, 45 Can. S. C. 425, decided by the Supreme Court of Canada. In that case it appeared that by an amendment to the Municipal Act in 1894, municipal councils were required to hold their meetings within the corporate limits unless by unanimous action of the council it was determined that it was more convenient to hold them outside. Prior to this amendment, and wanting that discretion, the council of South Vancouver, which was charged by law with setting up within its own membership what was called a Court of Revision for the revision of tax assessments had for many years held its council meetings and also its sessions as such Court of Revision in an adjoining municipality, and the question arose as to the validity of a tax sale of real property made pursuant to action of such Court of Revision so held. A portion of the syllabus in this case reads as follows:

“Prior to the amendment of the British Columbia ‘Municipal Act, 1892’ by the Municipal Amendment Act, 1894, Vict. (N. C.) ch. 34, sec. 15, municipal councils subject to those statutes had no power to hold meetings for the transaction of any administrative, legislative or judicial business of the municipal corporation at a place outside of the territorial boundaries of the municipality.

Courts of revision organized under the British Columbia municipal statutes, have no power to exercise their functions as such except at meetings held within the territorial limits of the municipality where the property described in the assessment rolls to be revised by them is situate.”

The court, in the course of its opinion, said:

“The discharge of their duties at home, in some chosen seat there, is implied in the legal history of such corporations; and in reading the language of statutory enactments creating them or empowering them, such history must be duly regarded. Thus read, both sense and colour or a shade of meaning are given to the language of restriction just quoted.

The presumption is entirely in favor of the legislative or administrative acts of such a corporation being confined within its territorial limits unless where, by reason of some necessary implication requiring it in order to enable it effectually to dis-

charge the duties its constituent Act has cast upon it to do, something must be done beyond such limits."

The court, referring to the Municipal Act which authorized the council to name a place for its meetings and for the sitting of the Court of Revision, said:

"It will be observed this power seems to indicate a power to name a place. Does that enable it to name a place outside the municipality for holding a court of revision? I think not. The nature of the court, the duties it has to discharge, the nature of the complaints to be heard and means of hearing and adjudicating upon them properly, as well as facilities furnished for the members of the court and for those concerned being in attendance with witnesses for whom no conduct money was to be allowed but only a per diem allowance, all seem to forbid the thought of the court being held outside of the limits of the municipality for if it could go a mile beyond, it could go twenty or more. And when the council is given power to name the place of which notice has to be published it must be held to be bound to name a place within said limits."

The Ohio statutes throw but little light on the subject of the location of municipal offices but Section 4239 General Code, provides that meetings of the council may be "held at such time and place as prescribed by ordinance, and shall at all times be open to the public."

Section 4550, relating to the duties of the mayor as a magistrate provides:

"He shall keep a docket, and shall be entitled to receive the same fees allowed justices of the peace for similar services. *He shall keep an office at a convenient place in the corporation*, to be provided by the council, and shall be furnished by the council with the corporate seal of the corporation, in the center of which shall be the words, 'Mayor of the city of—', 'Mayor of the village of—', as the case may be." (Emphasis added.)

Aside from these provisions, I find nothing bearing directly on the question whether the municipal offices must be kept and municipal business transacted within the corporation. There is, however, some significance to be attached to the stipulation of Section 4239 supra, to the effect that all meetings of council shall be open to the public. It appears to me that if it be claimed that because there is no prohibition against

doing so council could take its place of meeting not only one mile from its boundaries but if it chose, twenty miles or five hundred, it could virtually deprive its citizens of the opportunity of attending meetings of council, which the law clearly intends to guarantee them, and therefore, it is inconsistent with the spirit and intent of our law that the place of holding council meetings or municipal offices generally, be located away from the municipality, and if any departure from this rule is to be sanctioned it must be held to very narrow limits.

There are many things in the statutes of Ohio that suggest the general intention that municipal affairs are to be held closely to the locality, and a consideration of the great inconvenience and hardship that would result if municipal officers could be far removed from the boundaries of the municipality will, I think, strengthen the conviction that it would be violative of the whole policy of the law if such offices could be taken away any considerable distance. Among many instances, we may call attention to the proceedings for a public improvement the cost of which is to be assessed on benefited property.. Before the initial steps are taken, plans, specifications, profiles, etc. must be placed on file in the office of the clerk, and open to inspection (Secs. 3816, 3874 G. C.) The property owners affected are given a certain time within which they must file their claims for damages with the clerk, based naturally upon an inspection of the plans and specifications. In case of objections to assessment, equalizing boards are appointed and hearings are to be had. (Sec. 3848 G. C.)

The requirements of laws and ordinances relative to procuring licenses, permits, inspections, etc. all point to the reasonable conclusion that the offices where these matters are to be attended to shall be within reasonable reach of the citizens. The privilege of filing initiative and referendum petitions affecting legislation assumes that the persons interested shall have reasonable access to the records as to proposed or enacted ordinances.

The requirements of the law that all municipal officers must be residents of the municipality and that the councilmen elected by wards must be residents of the wards which they represent are all designed to keep the conduct of municipal government close at home and the officers close to the people.

In contrast to the reasons above suggested for holding the municipal offices and the conduct of public officers strictly within the corporate limits, we find certain provisions of law which possibly sanction a slight departure. For instance, Section 3615-1 of the General Code, authorizes joint construction of public works or improvements and the joint exercise of municipal powers by two or more municipalities. This section reads in part as follows:

“Two or more municipalities may enter into an agreement for the joint construction or management, or construction and management, of any public work, utility or improvement, benefiting each municipality, *or for the joint exercise of any power conferred on municipalities by the constitution or laws of Ohio, in which each of such municipalities is interested.* Any such agreement shall be approved by ordinance passed by the legislative body of each municipality party thereto, which ordinance shall set forth the agreement in full, and when so approved shall be a binding contract between such municipalities.* * *”.

(Emphasis added.)

This provision it will be noted, does not specifically limit such agreements to municipalities which are contiguous, but from the nature of the matters covered it seems obvious that municipalities taking advantage of that authority must of necessity be very closely situated geographically.

We find also in the statutes relative to appropriation of property the right given by Section 3677 General Code to municipalities to appropriate land for many purposes, including:

“For public halls and offices, and for all buildings and structures required for the use of any department; * * *”.

In the next section, Section 3678, it is said:

“In the appropriation of property for any of the purposes named in the preceding section, the corporation may, *when reasonably necessary*, acquire property outside the limits of the corporation. * * *”.

(Emphasis added.)

This would appear to give legislative sanction at least, for the acquisition of land and the erection of public buildings and offices required for use of any of the departments, though located in another mu-

nicipality, and while it is not express authority to conduct the business of a municipality in such other municipality, it is to some extent indicative of the legislative intention.

We may note also the provision of Sections 3399 to 3402 of the General Code, which authorize a village and a township to join in the erection and maintenance of a public building, which would appear to include a public office building.

Conceding that the above provisions of the statutes countenance and contemplate the location of municipal offices and the conduct of municipal business outside of the municipal corporate limits, it appears to me that such latitude must be confined to such nearness to the municipality and its people that the citizens will not be impeded or incommoded in the transaction of their business with the municipal offices and in attending public meetings, and that any material departure from the corporate boundaries would certainly subject the municipality and its officers to restraint at the hands of the courts.

In the particular instance which you set forth, I am inclined to the opinion that council meetings held in the township hall located in the city of Conneaut, and owned partly by the township out of which the village of Lakeville has lately been carved, would not be illegal, but I do not consider that I should make a ruling on the subject in view of the probability that any action so taken would probably become the subject of a judicial contest and should, for the security of all concerned, be judicially determined.

Your seventh question is as to the manner in which the salaries of various officers of the newly created village may be fixed. Section 3536 General Code provides:

“The first election of officers for such corporation may be a special election held at any time not exceeding six months after the incorporation at a time to be fixed by the agent of the petitioners. Unless such special election is held, the first election of officers for such corporation shall be at the first municipal election after its creation.”

Assuming that such election has been held and the officers qualified, it would appear that it would be within the province of the village

council to proceed to fix the salaries of the various municipal officers. Such action would not be violative of Sections 4213 and 4219 of the General Code, because those sections merely prohibit the salary of any officer, clerk or employe being *increased or diminished* during the term for which he was elected or appointed, and where no salary had previously been fixed, action of council in fixing a salary could not have the effect of increasing a salary. The second syllabus of the case of *Wise v. Barberton*, 20 O. C. C. (N.S.) 390, appears to me to be applicable. It reads:

“Where there is no valid ordinance fixing the compensation of councilmen, upon the induction into office of the first council elected after the advancement of a village to a city, such council can fix the compensation of its own members.”

While that case related to the advancement of a village to the status of a city by reason of change in population, yet it appears to me that the principle is even more clearly applicable where there have been no former officers and no salaries attached to any former offices. The court in its opinion, at page 393, quotes from Section 4213 General Code, and then says:

“This statute applies only to a case where a salary has been fixed and not where no salary has been provided.

In order to increase or decrease a salary, there must be something to increase or decrease. The Legislature can not have intended that salaries might not be provided where none had been provided before, for then there would be no way of compensating officers of newly created municipal corporations, and there would be difficulty in finding persons to fill such offices and perform the duties thereof.”

Within the limitations of Section 4219 General Code, the council would also have authority to fix the compensation of its own members.

Therefore, in specific answer to your several inquiries it is my opinion:

1. Where a township park has been established pursuant to the provisions of Section 3415 et seq. General Code, by vote of the electors of the township including those residing in a municipality lying within such township, the subsequent incorporation into a village of the re-

maining portion of such township will have no effect on a board of park commissioners appointed for the establishment and management of such park, or on the power of such board to levy taxes as provided in Section 3423 General Code, on all the property in such township.

2. The fact that all the area of a township has been incorporated into two municipalities does not in any way affect the existence or official organization of the township and taxes levied or to be levied for township purposes will be collected and paid into the township treasury as provided by law.

3. When a village has been incorporated and the first election of officers has been held, the village council so elected may proceed to fix the compensation of the officers and within the limitation of Section 4219 General Code, may fix the compensation of the members of council, and such action will not be a violation of the prohibition of said Section 4219 against increasing the salary of an officer during his term.

Respectfully,

THOMAS J. HERBERT
Attorney General