

29 O. A. R., p. 121, decided by the Court of Appeals of the First District, it was held:

'Where member of board of education moved into another school district with wife and children, who attended school in that district, such member had removed from district within meaning of Section 4748, General Code, relating to vacancy in board of education, though he still owned residence property in first district and intended to return at some future time; word "removal" meaning change of place, especially of habitation.'

The opinion in the above case is very short, and contains no reference to other decisions or to controlling legal principles, nor does it recite the facts in the case, to any great extent. It was a suit in quo warranto, and the court, of course, passed upon the facts, as well as the law. The court no doubt had before it all the attending circumstances, and observed the witnesses in giving their testimony. The case is not controlling in any respect, and leaves the question just as I have stated it herein; that is, that the intention of the party controls, and that intention is to be gathered from all the circumstances, his intention being the controlling circumstance, and his declaration of that intention being one of the criteria by which to determine the intention."

Without any further extended discussion, it clearly appears that it is a question of fact whether removal from the district causes a vacancy in an office. Moreover, the intention of the party is controlling and is to be gathered from all the circumstances. From the facts before me in this opinion, it appears that the constable has the intention to return to his own township in the fall. It is impossible for me to come to any other conclusion than that his removal will only be temporary.

It may not be amiss here to reiterate that I have assumed that the constable is neither refusing nor neglecting to perform the duties of his office. If my assumption be incorrect then a different conclusion might well be reached.

Therefore, in specific answer to your question, I am of the opinion that when a constable moves from a township in which he was elected, to another township, with the intention of returning after a short period of time, under circumstances which do not show an abandonment of the office, the office which he holds is not thereby vacated.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2002.

DISAPPROVAL, LEASE TO PREMISES OF SOPHIA C. ALTMAIER, CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO, FOR USE OF STATE OF OHIO.

COLUMBUS, OHIO, June 20, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication submitting for my examination and approval a lease in quintuplicate from Sophia C. Altmaier of 144 East Main Street, Columbus, Ohio, to yourself as Superintendent of Public Works, for the State of Ohio. This lease grants to your department the use for automobile parking purposes of 435.5 square feet in the rear of the Hartman Hotel Building and 122.7 square feet in the rear of lessor's place of business at 142 East

Main Street, in the city of Columbus, at a rental of fifteen dollars (\$15.00) per month for a term of twelve months, beginning June 15, 1930, and ending June 15, 1931.

After a careful examination of the papers submitted, I find that corrections should be made before the lease is formally approved.

Six copies of encumbrance estimate No. 369 are enclosed. On five of the copies there is set forth that 112.7 square feet immediately in the rear of lessor's place of business is to be rented. The five leases and your letter of transmittal show the figures as 122.7 square feet. There is a discrepancy in the territory actually leased. Moreover, one copy of the encumbrance estimate is not filled in at all. This copy should be made out like the others.

Inasmuch as the term of this lease will extend to the fifteenth day of June, 1931, it is obvious that the term will extend beyond the 1929-1930 biennial appropriations. Section 1 of House Bill 510, 88th General Assembly, specifically says that "The sums herein named in the column designated 1929 shall not be expended to pay liabilities or deficiencies existing prior to January 1, 1929, nor to pay liabilities incurred subsequent to December 31, 1930; those named in the column designated '1930' shall not be expended to pay liabilities or deficiencies existing prior to January 1, 1930, or incurred subsequent to December 31, 1930."

In the case of *State ex rel. Ross vs. Donahey*, 93 O. S. 414, it was stated at page 421 :

"A long line of authorities hold the true doctrine to be that the occupation of premises under a lease for a period of years, payable monthly or quarterly, does not fix a debt or liability for the whole amount that may become due and payable under the lease, but, upon the other hand, that such debt or liability arises only from month to month, or quarter to quarter, and becomes a debt or liability only when the use and occupation of the premises are actually furnished agreeable to the lease."

Applying the principle of the above case, it would seem that liability for rent under your lease only arises quarterly. Since the funds out of which the rentals of this lease are to be paid lapse if not encumbered prior to January 1, 1930, I believe that no liability will accrue against said funds for the installments due January 1, 1931, and April 1, 1931. Consequently, in order to protect the Superintendent of Public Works from any claim of personal liability for the payment of rent provided for in this lease, the same should contain the following further provision :

"This lease is made subject to appropriation by the State Legislature, and the Superintendent of Public Works as Director thereof is relieved from all liability for the payment of rent if such appropriation is not made."

For the reasons set forth above, I am disapproving this lease at the present time. When a proper lease is executed according to the above suggestions, the same, together with the corrected encumbrance estimates should again be submitted to this department for examination and approval.

Respectfully,
GILBERT BETTMAN,
Attorney General.