

As I have pointed out hitherto, the election to provide a successor must be one at which such an officer is regularly and properly elected and there is no authority for an election for the clerk's office in 1930; hence your second question will also be answered in the negative.

Answering your third question specifically, from the above discussion, it is evident that Ena Nelson's term will not extend to the first Monday in January, 1933, but rather until the time when a successor, elected at the 1932 election, can qualify and assume office. It is believed that a more extended discussion of your inquiry is unnecessary.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1778.

MEMBERS—OF ASSOCIATIONS TO APPREHEND FELONS AND MIS-
DEMEANANTS ORGANIZED UNDER SECTIONS 10200, ET SEQ.,
GENERAL CODE—MAY NOT RECEIVE FEES OR CARRY CON-
CEALED WEAPONS.

SYLLABUS:

1. *Officers and members of an association incorporated under the provisions of Sections 10200 et seq., of the General Code, are not entitled to the payment of fees for making arrests and serving warrants.*

2. *Members and officers of these associations are not "specially appointed police officers" within the meaning of the provisions of Section 12819, of the General Code, and therefore have no authority to carry concealed weapons.*

COLUMBUS, OHIO, April 14, 1930.

HON. R. D. WILLIAMS, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which reads as follows:

"Certain officials of the Ohio State Protective Association in this county have requested this office to secure for them an opinion from you as to what extent, if at all, members of this association are entitled to fees in criminal actions wherein they were the arresting officers.

Are the members of this association privileged to carry guns? Would the fact that they executed and filed a bond in the sum of one thousand dollars with the clerk of courts, give them such authority?"

I assume that the Ohio State Protective Association, to which you refer in your letter, is an association organized under the provisions of Sections 10200, et seq. of the General Code. Officers and members of such associations are authorized to apprehend felons and misdemeanants, by virtue of the provisions of Sections 10203 and 10204 of the General Code. Section 10203, General Code, provides:

"The officers and members of the association upon the proper certificate of the presiding officer thereof, when so elected or appointed, if a felony has been committed, may pursue and without warrant arrest any person whom they believe or have reasonable cause to believe guilty of the offense, and arrest and detain the alleged criminal in any county of the state to which he

fled, and return him to any officer of the county wherein the offense was committed, and there detain him until a legal warrant can be obtained for his arrest."

Section 10204, General Code, provides:

"An officer or member of such an association, under such certificate of authority may apply for and obtain a warrant for the arrest of a person accused of felony or misdemeanor, which shall be issued to him by any justice of the peace or police magistrate of a city or village under the same conditions as warrants are issued to constables. Under such warrant he shall have the same power to arrest and detain offenders as is vested in constables."

Under the provisions of these sections, members and officers of the association have authority, if a felony has been committed, to pursue and arrest, without a warrant, any person whom they believe or have reasonable cause to believe guilty of committing the offense, and authority is also given to a justice of the peace or police magistrate to issue a warrant to them for the arrest of a person accused of a felony or misdemeanor under the same conditions as warrants are issued to constables. You will note, however, that there is nothing in these sections which expressly authorizes the payment of fees to officers and members of the association for making arrests or serving warrants.

While Section 10204, General Code, provides that a justice of the peace or police magistrate shall issue warrants to a member or officer of such association under the same conditions as warrants are issued to constables, this provision cannot be properly construed to mean that the members and officers shall receive fees in the same manner as constables. A justice of the peace may issue a warrant to a constable after an affidavit or complaint has been filed, and he, the justice, has reasonable grounds to believe that an offense has been committed. These same conditions must exist before a justice of the peace may issue a warrant to an officer or member of the association. These are the conditions that are referred to in this section.

It may be urged that because the services are authorized, therefore, by implication, the payment for such services is authorized. This contention is not tenable, because there are no fees fixed, and further, it has been repeatedly held by the courts of Ohio, that even in the cases of public officers, where services for the benefit of the public are required by law, and no provision for this payment is made, it must be regarded as gratuitous, and no claim for payment can be enforced. *Jones vs. Commissioners*, 57 O. S., 189; *Clark vs. Commissioners*, 58 O. S., 107; *State ex rel. Ribble vs. Kleinhoffer*, 92 O. S., 163.

Consideration must be given at this point, to the provisions of Sections 10205 and 10206 of the General Code. Section 10205, provides as follows:

"Such an association may make and collect from its members, assessments authorized by its constitution or by-laws, and if so provided in its constitution, also may indemnify its members for losses caused by horse thieves or other felons, and expend such moneys as are deemed necessary in the pursuit, arrest, and to procure the conviction of felons."

Section 10206, General Code, provides as follows:

"Upon the apprehension and conviction of a person charged with felony by such an association, the commissioners of the county in which the crime was committed, may reimburse it in any sum not above one hundred dollars, for necessary expenses, not otherwise provided for by law, incurred in the apprehension and conviction of such criminal. Upon the apprehension and

conviction by the association of a person accused of misdemeanor, the commissioners of the county in which the crime was committed may reimburse it in any sum not above seventy-five dollars for necessary expenses incurred, not otherwise provided for by law, in the apprehension and conviction of such criminal."

You will note that Section 10206, General Code, authorizes the county commissioners to reimburse the association for "necessary expenses not otherwise provided by law" incurred in the apprehension and conviction of felons and misdemeanants. This language raises the question of whether or not the association may include as necessary expenses, compensation to members who perform services in the apprehension and conviction of criminals.

A reading of the entire act relative to these associations, clearly indicates that the purpose of this association is to assist duly appointed and elected law enforcement officials in the performance of their duties with reference to the arrest and conviction of criminals. The organization is composed of members who volunteer their services. It is only reasonable to infer that the Legislature did not contemplate the payment of compensation out of public funds to members who prompted by a high sense of public duty, offer their services voluntarily. If the Legislature intended to compensate for these services it would have expressed its intention in plain terms.

I do not believe that the term "expenses" as used in the statutes includes compensation to members for services rendered in the apprehension and conviction of criminals.

It appears to me that it was the intention of the Legislature to make the organization whole for money actually laid out for, or by, its members, but not to compensate them for their time and labor.

In view of the foregoing discussion, I am of the view that officers and members of an association incorporated under the provisions of Sections 10200, et seq. of the General Code, are not entitled to the payment of fees for making arrests and serving warrants.

I now direct my attention to your inquiry as to whether or not members of associations may carry guns, upon giving a bond. If any such right exists, it must be by virtue of the provisions of Section 12819, of the General Code, which provides as follows:

"Whoever carries a pistol, bowie knife, dirk, or other dangerous weapon concealed on or about his person shall be fined not to exceed five hundred dollars, or imprisoned in the county jail or workhouse not less than thirty days nor more than six months, or imprisoned in the penitentiary not less than one year nor more than three years. Provided, however, that this act (G. C. 12819) shall not affect the right of sheriffs, regularly appointed police officers of incorporated cities and villages, regularly elected constables, and special officers as provided by Sections 2833, 4373, 10070, 10108 and 12857 of the General Code to go armed when on duty. Provided further, that it shall be lawful for deputy sheriffs and specially appointed police officers, except as are appointed or called into service by virtue of the authority of said Sections 2833, 4373, 10070, 10108 and 12857 of the General Code to go armed if they first give bond to the State of Ohio, to be approved by the Clerk of the Court of Common Pleas, in the sum of one thousand dollars, conditioned to save the public harmless by reason of any unlawful use of such weapons carried by them; and any person injured by such improper use may have recourse on said bond."

You will note that the inhibition against carrying concealed weapons does not

apply to sheriffs, regularly appointed police officers of incorporated cities and villages, regularly elected constables, and special officers as provided in Sections 2833, 4373, 10070, 10108 and 12857 of the General Code. These exceptions do not apply to members and officers of the organization to which you refer.

Section 12819, General Code, further provides that it shall be lawful for deputy sheriffs and specially appointed police officers, except as are appointed or called into service by virtue of the provisions of Sections 2833, 4373, 10070, 10108 and 12857, General Code, to go armed if they first give bond to the State of Ohio, approved by the Clerk of the Court of Common Pleas, in the sum of \$1,000, conditioned to save the public harmless by reason of any unlawful use of such weapons carried by them. Any authority that an officer or member of these associations may have to go armed, must be found in the provisions of Section 12819 of the General Code, and from a reading of this section, they may have such authority only if they are "specially appointed police officers."

I do not deem it necessary to enter into a discussion of this phase of the question as to whether or not the members and officers of these associations are "specially appointed police officers" within the meaning of Section 12819 of the General Code, because this question has been fully discussed in an opinion rendered by a former Attorney General, which opinion may be found in Opinions of the Attorney General for 1914, at page 1041. The then Attorney General, in the course of the opinion, said:

"I cannot bring myself to the belief that the members of these associations are specially appointed police officers, as in its ordinary signification the expression 'police officer' means one who is charged with the detection and arrest of those who violate any of the laws of the state, or ordinances of a municipality, and who, during the time he is acting, has the obligation of continually engaging in such service. It does not comprehend the doing of police work in a particular case, nor is the expression 'specially appointed' to be regarded as in any way modifying the view which I have just expressed. These terms last quoted have reference to those officers who are not members of a regular police force, but who while on duty are performing the work or service of police officers as hereinbefore defined, and such designation, no doubt, was intended to refer to those officers designated in Sections 151, 1821 et seq., 5889 et seq., 9150 et seq., and 9913 of the General Code."

I concur in the views of my predecessor upon this question. Therefore, I am of the view that members and officers of these associations are not specially appointed police officers, within the meaning of Section 12819 of the General Code, and therefore they have no authority to go armed, upon the giving of a bond.

In specific answer to your inquiries, I am of the opinion:

First, officers and members of an association incorporated under the provisions of Sections 10200 et seq. of the General Code, are not entitled to the payment of fees for making arrests and serving warrants.

Second, members and officers of these associations are not specially appointed police officers, within the meaning of the provisions of Section 12819, of the General Code, and therefore have no authority to carry concealed weapons.

Respectfully,

GILBERT BETTMAN,

Attorney General.