

any purpose a political subdivision, it is quite clear that such housing authority is an agency of the state so as to give real property owned by it the character of public property within the meaning of the constitutional and statutory provisions above noted. I am likewise of the view that under the principles recognized and applied in the case of *State, ex rel., vs. Kerns, Auditor*, 104 O. S. 550, and in other cases that might be cited, the use which the housing authority will make of this property will be a public use within the meaning of the constitutional and statutory provisions relating to the exemption from taxation of public property used for public purposes.

By way of specific answer to the question submitted in the communication of the Cincinnati Metropolitan Housing Authority, I am of the opinion that real property acquired, owned and held by such housing authority and used by it in furtherance of the purposes designated in the act above referred to, will have the character of public property used for public purposes and as such will be exempt from taxation.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3263.

APPROVAL, BONDS OF LUCAS COUNTY, OHIO, \$137,000.00.

COLUMBUS, OHIO, October 1, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3264.

APPROVAL, BONDS OF DAYTON CITY SCHOOL DISTRICT, MONTGOMERY COUNTY, OHIO, \$15,000.00.

COLUMBUS, OHIO, October 1, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3265.

JUSTICE OF PEACE—UNAUTHORIZED TO APPOINT SPECIAL CONSTABLE TO PATROL HIGHWAYS AND ARREST VIOLATORS OF ORDERS OF P. U. C. O.

SYLLABUS:

A justice of the peace is unauthorized to appoint a special constable under

section 1738, General Code, to patrol state highways in his county for the purpose of arresting violators of orders of the Public Utilities Commission of Ohio.

COLUMBUS, OHIO, October 2, 1934.

HON. FRAZIER REAMS, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR:—Receipt is acknowledged of a recent communication from your assistant, Paul W. Alexander, as follows:

“A justice of the peace of this county has been called upon to appoint a special constable under G. C. O. 1738. The property of the State of Ohio it is proposed to guard and protect consists of the State Highways within the county, and the protection it is proposed to afford consists of arresting violators of orders of the Public Utilities Commission of Ohio.

I am told that the practice of appointing special constables, as outlined above, is becoming somewhat general. May I inquire if, in your opinion, such practice is valid.”

Section 1738, General Code, referred to in your communication, and section 3331, General Code, read as follows:

“Sec. 1738. Upon the written application of the superintendent of public works of Ohio or three freeholders of the county in which a justice resides, he may appoint one or more electors of the county special constables who shall guard and protect the property of the state of Ohio or the property of such freeholders, and the property of the state of Ohio under lease to such freeholders, designated in general terms in such application, from all unlawful acts, and so far as necessary for that purpose, a constable so appointed shall have the same authority and be subject to the same obligations as other constables.”

“Sec. 3331. A justice of the peace may appoint a constable or constables for a special purpose, either in civil or criminal cases, when such appointment becomes necessary in the following cases:

1. When there is no constable in the township:
2. In case of disability of one of the regular constables in the township:
3. When the constable therein is a party to the suit:
4. When, from the pressure of official business, the constables therein are not able to perform the duties required by the office.

The justice making the appointment, shall make a memorandum thereof on his docket, and require the person appointed to take an oath, as in other cases.”

In Opinions of the Attorney General for 1931, Vol. II, Page 1162, my immediate predecessor considered these sections in connection with a matter somewhat similar to that presented by you in your communication. The communication of the prosecuting attorney to which the foregoing opinion was responsive, read as follows:

“Can a justice of the peace appoint a special constable for the sole

purpose of watching the state highways for speed law violators? There is a sort of epidemic of drunken and reckless drivers in this county at the present time, and we thought this would be one way of breaking it up."

It may be noted that the question was framed without reference to any particular statute. The answer to the question, as disclosed by the syllabus of the opinion, was:

"A special constable cannot be appointed for the general purpose of patrolling the public highways to enforce traffic laws. The duties of a special constable when appointed under section 3331 of the General Code are limited to the particular case in which he is appointed."

In the opinion, reference was made to section 1738, General Code, at page 1163, as follows:

"Sections 1738, 13428 and 3331 relate to the appointment of special constables. *The first two sections above mentioned have no application in view of the facts stated.* The last section, which must control in the case under consideration, reads:

* * * "

(Italics mine)

Obviously, the then Attorney General must have felt that section 1738, General Code, could have no application to the real property included in state highways within the counties of Ohio.

It will be noted in examining section 1738, General Code, that the justice of the peace has authority to appoint a special constable, under such section, to guard *state property* only upon application of the Superintendent of Public Works of Ohio. Certainly the legislature must have contemplated in enacting such section that only property of the state of Ohio under the immediate supervision of the public works department, such as state buildings, state parks, canal lands, etc., should be included.

The 1931 opinion above referred to was followed and approved in my opinion No. 1937, rendered November 29, 1933, and reported in Opinions of the Attorney General for 1933, Vol. III, Page 1833. The communication to which this opinion was responsive, read:

"The question has arisen in this county as to the discretion and authority of a justice of the peace to appoint a special constable under paragraph 4 of section 3331, General Code, for the purpose of apprehending violators of section 614-92, General Code, and prosecuting such violators under section 614-100, General Code.

The question at issue is, can a justice of the peace appoint a special constable to handle such violations as a class, the appointment being a continuing one, and being made once for all; or, must there be a special appointment for each separate violation, or misdemeanor? It is understood that there is a regularly elected constable in the township, who is not otherwise engaged with 'pressure of official business,' but who does not arrest and prosecute for misdemeanors under section 614-92, General

Code, presumably on account of lack of familiarity with and knowledge of the Public Utilities Commission Code. * * * ”

It was held in such opinion as disclosed by the first paragraph of the syllabus :

“1. A special constable cannot be appointed under section 3331, General Code, for the general purpose of enforcing the provisions of section 614-92, General Code, since the appointment of a special constable under section 3331, General Code, is limited to the particular occasion for which the special constable is appointed. (Opinions of the Attorney General for 1931, page 1162, followed and approved.)”

It will be noted that my said opinion did not consider whether or not a special constable might be appointed to patrol state highways to enforce orders of the public utilities commission, by virtue of section 1738, General Code. The question was specifically raised only as to the power of appointment under section 3331, General Code, and consequently the exact question you raise as to section 1738, General Code, was not discussed. However, in following the 1931 opinion, which disposed of the question of the applicability of section 1738, General Code, to state highways, in the negative, I did not deem it necessary to go further in approving such opinion than the specific question presented in the communication addressed to me warranted.

It appears to me that the interpretation of section 1738, General Code, as disclosed by the 1931 opinion, is a proper one, and I am therefore of the opinion, in specific answer to your question, that a justice of the peace may not appoint a special constable under section 1738, General Code, to patrol state highways in his county for the purpose of arresting violators of orders of the Public Utilities Commission of Ohio.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3266.

BOARD OF EDUCATION—PROPERTY VESTED THEREIN NOT SUBJECT TO LEVY OR ATTACHMENT BY JUDGMENT CREDITORS—MANDAMUS WILL LIE TO COMPEL SATISFACTION OF JUDGMENT BY APPROPRIATION OF FUNDS.

SYLLABUS:

1. *Real or personal property vested in a board of education for school purposes may not be levied upon or attached by judgment creditors nor may funds distributable to a board of education by way of tax settlements be so levied upon or attached. Mandamus will lie to compel a board of education to appropriate funds in its possession and available for the purpose, to the payment of final judgments rendered against the board, or to levy a tax within constitutional and statutory limitations, as provided by Section 5625-5 of the General Code of Ohio, to pay such judgments.*

2. *No tax levy may be made by a board of education for any purpose*