

bers present, are *de facto* officers and all proper business transacted by the district board of health in which such *de facto* members participated, is valid and binding.

Sixth. Offices of members of the district advisory council and district board of health are incompatible and a member of the district advisory council is not eligible to appointment as a member of the district board of health.

Respectfully,

C. C. CRABBE,

Attorney General.

1170.

COUNTY COMMISSIONERS—COMPENSATION—SECTION 6502 G. C. APPLIES TO BOTH SINGLE AND JOINT COUNTY DITCH IMPROVEMENTS.

SYLLABUS:

Under the provisions of section 6537 of the General Code, the provisions of section 6502 of the General Code, relating to the compensation of County Commissioners, have application to both single and joint county ditch improvements.

COLUMBUS, OHIO, February 1, 1924.

HON. J. F. VANDENBROEK, *Prosecuting Attorney, Napoleon, Ohio.*

DEAR SIR:—Receipt is acknowledged of your recent letter, transmitting the following statement and request for an opinion:

“Section 6502 of the G. C. amended in House Bill 569—110 Ohio Laws, provides additional salary for County Commissioners per diem and it specifies further in this section that said allowance is for work so defined in this chapter. Is it the intention of the Legislature that this chapter shall mean single county ditches only, or does that mean ditches which includes joint and other ditches?”

Enacted House Bill No. 569, referred to by you, was an emergency act, passed April 3, 1923, and is found in 110 O. L. 161. The purpose of this act was to codify the drainage laws of the state. This enactment is made up of Chapters one, two, five, six and eight. Chapter one covers the subject of single county ditches; chapter two, joint county ditches; chapter five, township ditches; chapter six, underground drains; and chapter eight, cleaning and repairing of ditches, drains and watercourses.

Said section 6502, General Code, is a part of chapter one, and reads:

“In addition to the salary otherwise provided by law for county commissioners, each commissioner shall receive, for performing all duties required of him in this chapter, five dollars per day for each day actually engaged in work on an improvement as defined in this chapter, but not to exceed one hundred days in any one year, and not to exceed four days on any one improvement and the one-half part thereof shall be paid out of the general fund of the county, and the one-half part thereof shall be charged as costs in the location and construction of the improvement and paid in the first instance out of the general ditch improvement fund of the county.”

A reading of this section discloses that the language in the section is limited in application to duties performed which are required in said chapter, namely, chapter one, and provides a per diem for each day actually engaged in work on an improvement defined in said chapter. The chapter deals exclusively with single county ditches.

Chapter two of the act deals exclusively with joint county ditches.

Section 6537, General Code, which is a part of chapter two of said act, reads as follows:

"Save and except as is otherwise provided in this chapter, the joint board of county commissioners may do and perform all the things that the commissioners may do in a single county improvement, and shall be governed by and be subject to all the provisions of the chapter relating to single county ditches in so far as applicable. The proceedings for a joint county improvement shall proceed before said joint board the same is if said joint board were a board of county commissioners representing a county that included all the territory of all the counties represented by the commissioners on said joint board. All rights of appeal, and all other rights or remedies as provided in the chapter relating to single county improvements shall apply to joint county improvements. All officers doing any acts or making any findings for or against such improvement shall perform all the duties required of them pursuant to the provisions of chapter one of this title. All owners affected by the proceedings for a joint county improvement shall have all the rights and remedies given them in single county improvements. The proceedings in joint county improvements shall be the same as the proceedings in single county improvements, save and except as modified in this chapter."

It will be noted from a reading of this section that the provisions of chapter one, in so far as they are applicable, are made applicable to the proceedings in connection with a joint county ditch improvement, and specifically provide:

"All officers doing any acts or making any findings for or against such improvement shall perform all the duties required of them pursuant to the provisions of chapter one of this title."

It is believed that the provisions of this section and the sentence quoted are sufficient to show that it was the intention of the legislature that the provisions of chapter one, relative to compensation, in the absence of other specific statutory provision, were applicable to the services performed by the county commissioners in ditch proceedings of the character contemplated by the chapter.

In conclusion, it would follow that under the provisions of section 6537 of the General Code, above quoted, the provisions of said section 6502 of the General Code, relating to the compensation of county commissioners, have application to both single and joint county ditch improvements.

Respectfully,

C. C. CRABBE,
Attorney General.