

Specifically answering the inquiries discussed, I am of the opinion that:

1. If the proposed amendment of section 2 of article XII of the Ohio Constitution is adopted, such amendment will not affect the tax levies made in the year 1933, although a portion of such taxes will not be collected until 1934.

2. By express provision of the schedule of the proposed amendment, all levies for the retirement of bonds issued or authorized prior to January 1, 1934, outside of the fifteen mill limitation, and all tax levies authorized prior to said date by vote of the electors outside of the fifteen mill limitation will not be subject to the limitation provided by said amendment.

3. All levies made after January 1, 1934, for bonds theretofore authorized or issued subject to the present fifteen mill limitation will be subject to the one per cent limitation of said proposed amendment, if adopted.

4. The minimum board of education levy authorized by section 5625-23, General Code, will not be affected by said proposed amendment, so long as such levy can be made within the one per cent limitation imposed by said amendment after the mandatory levies within such limitation for bonded indebtedness are made.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

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1809.

APPROVAL, BONDS OF HOLLOWAY VILLAGE SCHOOL DISTRICT,  
BELMONT COUNTY, OHIO—\$4,280.00.

COLUMBUS, OHIO, November 2, 1933.

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

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1810.

APPROVAL, BONDS OF GROVER HILL RURAL SCHOOL DISTRICT,  
PAULDING COUNTY, OHIO—\$5,600.00.

COLUMBUS, OHIO, November 2, 1933.

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

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1811.

LORAIN MUNICIPAL COURT—ELECTORS OF BROOKSIDE TOWNSHIP  
MAY NOT VOTE FOR JUDGE AND CLERK THEREOF AT NOVEMBER  
7, 1933, ELECTION—JURISDICTION THEREOF DISCUSSED

**SYLLABUS:**

*The electors of the newly created Brookside Township, formerly a part of Sheffield Township, Lorain County, do not have the right to participate in the election of a judge and clerk for the Municipal Court of Lorain in the forthcoming election.*

COLUMBUS, OHIO, November 3, 1933.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“I wish to submit the following proposition to you and will appreciate your prompt consideration of same.

The Municipal Court of Lorain, Ohio, was established in 1921, as per the provisions of sections 1579-601 to 1579-641, inclusive. Section 1579-601 provides,

“That there be and hereby is created a court of record in and for the city of Lorain and the townships of Black River and Sheffield in the County of Lorain and State of Ohio to be styled “The Municipal Court of Lorain, Ohio” (the jurisdiction thereof, to be as herein and hereinafter fixed and determined).”

It will be seen, therefore, that the territorial jurisdiction of this court comprises the two townships of Black River and Sheffield, within which townships the city of Lorain is located. A few years ago the people of the eastern part of Sheffield Township established the village known as Sheffield Lake Village.

On the 16th day of October this year, the people of the southern part of Sheffield Lake Village under authority of Section 3577-1 of the General Code held an election and in that election determined to detach themselves from Sheffield Lake Village and at the same time established a new township to be called Brookside Township.

The question now arises as to whether the act of the electors in establishing the new Brookside Township through the process of detaching themselves from Sheffield Lake Village and from Sheffield Township, takes this detached territory out of the jurisdiction of the Municipal Court of the city of Lorain, thus causing the question to arise as to whether the electors in the new Brookside Township have a right to participate in the election of the Judge and Clerk of Municipal Court as they hitherto have done.”

As stated in your letter, section 1579-601, General Code, establishes the jurisdiction of the Municipal Court of Lorain and extends it over the two townships of Black River and Sheffield. The City of Lorain extends into both townships but is not coterminous with the two townships. Part of Sheffield Township has been detached and is now called Brookside Township. At the outset, it is well to note that the limits of the three townships are identical with those of the two former townships. The sole question presented by your inquiry resolves itself into whether the legislature meant that the jurisdiction of the Lorain Municipal Court should extend over that territory which comprised Black River and Sheffield Townships at the time of the passage of the Lorain Municipal Court Act, or should it extend over the territory of these two townships as they existed at the time of the enactment of the Lorain Municipal Court Act and as they may exist any time in the future. In this connection, I have been unable to find any reported cases in Ohio dealing with this question.

Municipal courts in Ohio can only be created by the legislature. *State, ex rel., vs. Hutsinpillar*, 112 O. S. 468. The syllabus of that case reads as follows:

"The municipalities of this state have no power, by charter or otherwise, to create courts and *appoint* judges thereof, such exercise of power being in violation of Sections 1 and 10, Article IV, of the Constitution of Ohio."

The legislature, in establishing the jurisdiction of the Municipal Court of Lorain, has determined that the townships of Black River and Sheffield shall control the jurisdiction of that court. The legislature is presumed to know existing laws when it passes a particular law. Hence, at the time it created the Municipal Court of Lorain, it is presumed to have known that there were sections of the General Code of Ohio which permitted the detachment of territory from these two townships. Likewise, the legislature is presumed to have known that territory could be added to these two townships. To say that the legislature when it created this particular court intended to limit the jurisdiction to the territorial boundaries of Black River and Sheffield Townships as they existed at the time it passed the Lorain Municipal Court Act, is to disregard other existing sections of the General Code. If the legislature intended the jurisdiction to be exactly that of the territory embraced by the two townships as they formerly existed, it would no doubt have said so in clear language.

While the City of Lorain is at the present time located within the boundaries of Black River and Sheffield Townships, there is nothing to prevent the city from spreading into new townships. Surely, it could not be argued that the Municipal Court of Lorain would have no jurisdiction over this new territory merely because the City of Lorain comprised a certain area at the time of the passage of the Lorain Municipal Court Act. The "pole star" of all statutory construction is to determine the legislative intent. A conclusion, as above indicated, would, in my opinion, be contrary to the legislative intent.

Section 1579-602, General Code, reads in part as follows:

"\* \* \* Said municipal judge at the time of his election or appointment and during the continuance of his office shall be a qualified elector and resident of either the city of Lorain or the townships of Black River, or Sheffield, county of Lorain, and state of Ohio, \* \* \*."

If the municipal judge of the Municipal Court of Lorain lived in the territory that is detached and which now comprises Brookside Township, there is considerable doubt as to whether he could continue to act as judge. In Opinions of the Attorney General for 1928, Vol. II, page 984 at page 987, the following is stated:

"As a general rule, in the absence of statutory provisions affecting the question, where by constitutional or statutory provision, an elected officer is required to reside in the political subdivision or district for which he is elected, a transfer of territory of such political subdivision or district in which territory such officer resides will have the effect of creating a vacancy in his office unless such officer within a reasonable time establishes his residence in the territory of the political subdivision from which the transfer is made."

In the case of *State of Ohio, ex rel. Ives. vs. Choate*, 11 Ohio, 511, it was held that where the Legislature changes the boundaries of a county and such

change places an associate judge within the limits of another county, such associate judge forfeits his office unless within a reasonable time he removes into the limits of the county for which he was elected.

In the case of *State of Ohio, ex rel. Hartshorn, vs. Walker*, 17 Ohio, 135, it was held that on the formation of a new county, the county commissioners of any of the counties from which the new county is formed, who reside within its limits, cease to be commissioners of the old county, unless they move into it.

Without further extending this opinion, and in specific answer to your question, it is my opinion that the electors of the newly created Brookside Township, formerly a part of Sheffield Township, Lorain County, do not have the right to participate in the election of a judge and clerk for the Municipal Court of Lorain in the forthcoming election.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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1812.

APPROVAL, LEASE TO CANAL LAND IN DRESDEN, MUSKINGUM COUNTY, OHIO, FOR THE RIGHT TO LAY AND MAINTAIN SANITARY SEWERS, ETC.

COLUMBUS, OHIO, November 3, 1933.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication submitting for my examination and approval a certain canal land lease which you have executed to the village of Dresden, Muskingum County, Ohio, under authority conferred upon you by amended Substitute Senate Bill No. 72 enacted by the 89th General Assembly, 114 O. L. 541, which provides for the abandonment of that portion of the Ohio Canal and of all lateral canals and canal feeders connected therewith within Tuscarawas, Coshocton and Muskingum Counties, Ohio, and for the lease and sale of canal lands so abandoned.

By this lease, which is one for a stated term of thirty years and which provides for an annual rental of \$30.00 during the first fifteen year period of the term of the lease, there is leased and demised to said village the right to lay and maintain sanitary sewers, with the necessary laterals, manholes and other devices incidental thereto in the bed of the abandoned Dresden Side Cut Canal, located in said village.

Upon examination of this lease, I find that the same has been properly executed by you in your official capacity as Superintendent of Public Works and as director of said department, and by the village of Dresden, acting by the hand of its mayor pursuant to the authority of a resolution of the council of said village duly adopted under date of August 7, 1933.

Upon examination of the terms and provisions of this lease and of the conditions and restrictions therein contained and made a part thereof, I find the same to be in conformity with said act of the 89th General Assembly, above referred to, and with other statutory enactments relating to the execution of leases of this kind.