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TOWNSHIP TRUSTEES—MAY DESIGNATE ANY DULY ELECTED AND QUALIFIED CONSTABLE A POLICE CONSTABLE—CONSTABLE NOT ELECTED BUT APPOINTED—NOT ELIGIBLE FOR OFFICE OF POLICE CONSTABLE—SECTION 3348 G. C.

SYLLABUS:

Under the provisions of Section 3348, General Code, the trustees of a township may designate any duly elected and qualified constable a police constable. Any constable who has not been elected but has gained office through appointment is not eligible for the office of police constable.

Columbus, Ohio, January 8, 1948

Hon. Frank T. Cullitan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Bedford Township in Cuyahoga County elects two constables, and the trustees of the township have heretofore designated such constables as police constables. There is absolute need for at least two such police constables, since the unincorporated area of Bedford Township has a population in excess of 3800 people with approximately a thousand dwelling units scattered over a considerable area. In such unincorporated area of Bedford Township there are nine taverns dispensing liquor, five of which are night club licenses.

The two present constables were re-elected at the last election. However, it now appears that one of such constables will not qualify for such office because of illness.

By virtue of General Code Section 3329, the trustees of course may fill such vacancy by appointment thereto. However, the question has arisen, whether or not the trustees may thereupon designate such constable as a police constable.

General Code Section 3348 empowers the trustees to designate any duly elected and qualified constable as a police constable. The question presented is whether or not a constable appointed to fill a vacancy caused by the failure of an elected constable to qualify may be designated as a police constable."

The sections which pertain to constables with reference to this question may be divided into two classes. The first class, designated because of the use of the word "elected," includes the first and last sections, which are as follows:

Section 3327, General Code:

"Such number of constables as directed by the trustees shall be elected, biennially, in each township who shall, each, hold his office for a term of two years, commencing on the first day of January next after his election." (Emphasis added.)

Section 3348, General Code:

"The trustees of a township may designate any duly elected and qualified constable as police constable. The trustees may pay each police constable from the general funds of the township such compensation as the township trustees may by resolution prescribe for the time actually spent in keeping the peace, protecting property and performing their duties as police constables as required by law. Such police constables shall not be paid under this section for services for which the state elsewhere provides a fee, and they shall file an itemized bill of their expenses and services with the trustees before they may be allowed and paid." (Emphasis added.)

The second class designated because of the use of the term "appointed," includes Sections 3329 and 3331, which read as follows:

Section 3329. "When, by death, removal, resignation, or non-acceptance of the person elected, a vacancy occurs in the office of constable, or when there is a failure to elect, *the township trustees shall appoint* a suitable person to fill such vacancy

until the next biennial election for constable, and until a successor is elected and qualified. * * *” (Emphasis added.)

Section 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. * * *” (Emphasis added.)

You have stated that it has been the custom of the Bedford township trustees to appoint *elected* constables as police constables, and that now it is the desire of these trustees further to appoint to the office of police constable one of the men whom they have already *appointed* as constable.

The legislature has limited the appointive power by the township trustees in this respect by Section 3348, General Code. Only elected constables are eligible for the position of police constable. Inasmuch as this is the last section in this group, the word “elected” must have been chosen with some specific intent rather than the term “appointed.” It is believed that the intent of the legislature in Section 3348, General Code, by its use of the word “elected” may be ascertained when Section 3331, General Code, is taken into consideration. The latter section permits any justice of the peace within the township to appoint as many constables as he deems necessary in accordance with the provisions of that section. It was this provision concerning these constables, appointed by the justices of the peace, that the legislature apparently wished to eliminate from eligibility of appointment to police constable. This is evident when the entire chapter on Constable is read as a unit. The word “elected” is only used in the first section. Thereafter follow the provisions concerning “appointment.” However, again in the last section, Section 3348, General Code, the term “elected” is once more used. Further, the legislative reason for such limitation may have been to safeguard the township treasury, inasmuch as the police constables receive compensation from the general fund of the township.

In the present case the intent of the legislature would not be evaded for, as you have related, the trustees would appoint as police constable one whom they had previously appointed constable, rather than one whom a justice of the peace had specially appointed as constable. However, the question remains whether we are permitted to look beyond the words the legislature used into the real intent, or whether the words must be accepted according to their common usage.

Courts have consistently held in the construction of statutes, that the intent of the law-making body is not concerned if the language of the statute and its meaning is clear.

In *Slingluff, et al. v. Weaver, et al.*, 66 O. S., 621, the second paragraph of the syllabus reads:

“But the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.”

Section 3348, General Code, reads in part as follows:

“The trustees of a township may designate any duly elected and qualified constable as police constable. * * *”

The language and its meaning herein is clear and free from doubt. Therefore, it must be read and understood according to its natural and most obvious import, without resorting to subtle and forced construction for the office of interpretation is to bring sense out of the words used.

The words in question are “elected” and “appointed.” Section 3327, General Code, uses the word “elected.” It is evident that this same word “elected” which appears in Section 3348, General Code, was used with a similar meaning. In both instances the meaning is unambiguous. “Elected” means the expression of a choice by the voters of a body politic. As used in the above sections “elected” conveys the interpretation of “popular election” or “election by the people.” “Appointed” generally means the designation of a person to hold an office, by an individual, or a limited

number of individuals, to whom the power of selection has been duly delegated. See *The State v. Squire*, 39 O. S., 197.

It is evident that my opinion will not obviate the unfortunate situation which will ensue. But, the Attorney General can not correct supposed errors, omissions or defects in legislation. Election and appointment are different and distinct modes of filling an office, and when the power of appointment is limited it must be exercised according to the terms of the statute limiting it. It has often been stated that the interpretation of statutes is not to be upon equitable principles or conveniences, but rather according to rules of law.

It is accordingly my opinion and you are advised that under the terms of Section 3348, General Code, the trustees of a township may designate any duly elected and qualified constable a police constable. Any constable who has not been elected but has gained office through appointment is not eligible for the office of police constable.

Respectfully,

HUGH S. JENKINS,
Attorney General.