

no cigarette revenues on hand to meet the claim. I am informed by the Auditor of State that the annual settlement is made on July 10th of each year. As to this matter, I may refer you to an opinion of the Attorney General, found in Opinions of the Attorney General for 1915, volume II, page 1270. The second paragraph of the syllabus of that opinion reads as follows:

"Refunding orders drawn under section 5896, G. C., should be drawn against the general county fund and such fund should be reimbursed by charging the amount of the refunder against the undivided proceeds of collections of cigarette assessments in the treasury to the credit of the state and county and the city, village or township to which the original assessment, on account of which the refunder was made, was distributed and in the same proportion as such original distribution was made under the statute, and if there are not sufficient of such proceeds of assessments, to the credit of any such beneficiaries, the amount chargeable against it should be deducted from the undivided tax distribution due it at the next settlement."

You will note that a refunder is made from the general fund of the county, and if there are not sufficient proceeds of assessments to the credit of the subdivisions to which the assessments were distributed in the first instance, the amount should be deducted from the undivided tax distribution made at the next settlement. This next settlement will occur on July 10, 1931. Hence, your conclusions are correct.

Accordingly, I am of the opinion that a refunder should be made to the owner of the golf club at this time from the general fund of the county and that the county auditor should deduct the amount paid from the next settlement, which will occur on July 10, 1931.

Respectfully,

GILBERT BETTMAN,

Attorney General.

2909.

STATUTORY CONSTRUCTION—LAW ENACTED LATER IN PERIOD
OF TIME PREVAILS.

SYLLABUS:

As between Section 6864 as contained in House Bill 67 (Norton-Edwards Act) and Section 6864 as contained in Amended Senate Bill 86, Section 6864 contained in House Bill 67 was the later enactment, and is now in force and effect.

COLUMBUS, OHIO, February 4, 1931.

HON. ROBERT N. GORMAN, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—Acknowledgment is hereby made of the request from one of your assistants for my opinion, which reads as follows:

"In the 5th Volume of Page's Ohio cumulative Code Service on

page 415 will be found two sections of the General Code, each designated with the same number, viz: 6864.

In Volume 112 Ohio Laws, page 209, the original section 6864 is repealed. On page 501 is another repeal of 'the existing section.' Apparently these two bills originated one in the Senate and the other in the House of Representatives and were passed on the same day.

The county commissioners are engaged in projects requiring the use of this section and this office is unable to advise them intelligently on the subject without knowing which of the two sections is now in force.

Will you kindly give us the benefit of your opinion on the subject?"

As stated in the second branch of the syllabus of *State, ex rel. v. Halliday*, 63 O. S., 165:

"A bill can not become a law until it has been signed by the presiding officer of each house; and when one bill was so signed after another bill so signed on the same day, the former is the later enactment."

From the foregoing, it is apparent that if it can be determined which of the bills which both contain a Section 6864 was the later enactment, that bill and section would control.

While it is true that Amended Senate Bill 86 and House Bill 67 (Norton-Edwards Act) originated in opposite branches of the legislature, the fact that the Senate Bill was amended resulted in the presiding officer of the Senate being the last signatory of both bills.

An examination of both the House and Senate journals of the 1927 General Assembly discloses that although both bills were enacted on the same date, House Bill 67 (Norton-Edwards Act) was signed after Amended Senate Bill 86. See Ohio Senate journal, 1927, p. 687, 688; Ohio House journal, 1927, p. 848, 850.

It therefore follows that that Section 6864 contained in House Bill 67 (Norton-Edwards Act) would be the later enactment. Such section reads as follows:

"The commissioners shall cause notice of the time and place for both such view and hearing to be given by publication once a week for two consecutive weeks in a newspaper published and having general circulation in the county where the proposed improvement is located, if there be any such newspaper in said county, but, if there be no such newspaper published in said county, then in a newspaper having general circulation in said county. Such notice, in addition to the date and place of such view and place and time of the final hearing, shall state briefly the character of such proposed improvement."

I am cognizant of the fact that the constitutional amendment of 1903, Article II, Section 16, which grants to the Governor the exercise of the veto power, may give rise to a question as to whether the time of the Governor's signing a bill will affect the conclusion stated in the above quoted syllabus.

This point was passed upon by the Supreme Court of Ohio in *State v. Lathrop*, 93 O. S. 79, the pertinent part of the syllabus of which reads as follows:

"* * * All other acts go into effect ninety days after the same have been filed with the secretary of state, regardless of the date of approval by the governor."

Without commenting upon the correctness of this decision as regards the effect of the action of the filing of the bill with the secretary of state, it is to be noted that Amended Senate Bill 86 was filed in the office of the secretary of state May 4, 1927, while House Bill 67 was filed in the office of the secretary of state May 24, 1927.

In view of the foregoing, it is my opinion as between Section 6864 as contained in House Bill 67 (Norton-Edwards Act) and Section 6864 as contained in Amended Senate Bill 86, Section 6864 contained in House Bill 67 was the later enactment, and is now in force and effect.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2910.

APPROVAL, BONDS FOR THE FAITHFUL PERFORMANCE OF THEIR DUTIES—NINE RESIDENT DIVISION DEPUTY DIRECTORS—ONE RESIDENT DISTRICT DEPUTY DIRECTOR—ONE RESIDENT DEPUTY DIRECTOR—BUREAU OF BRIDGES.

COLUMBUS, OHIO, February 4, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted eleven bonds, each in the penal sum of \$5,000.00, with sureties as indicated, to cover the faithful performance of the duties of the officials as hereinafter listed:

- Charles Ash, Resident Division Deputy Director, Division No. 1. Central Surety & Insurance Corporation of Kansas City.
- J. C. Overmeyer, Resident Division Deputy Director, Division No. 2. Fidelity and Deposit Company of Maryland.
- C. E. Wild, Resident Division Deputy Director, Division No. 4, Maryland Casualty Company.
- B. H. Frasch, Resident Division Deputy Director, Division No. 5. Fidelity and Deposit Company of Maryland.
- Luke Brannon, Resident Division Deputy Director, Division No. 8. The Ohio Casualty Insurance Company.
- G. M. Anderson, Resident Division Deputy Director, Division No. 9. Commercial Casualty Insurance Company.
- A. W. Sherwood, Resident Division Deputy Director, Division No. 10. The Aetna Casualty and Surety Company, of Hartford.
- M. W. Shuit, Resident District Deputy Director, Adams County. The Aetna Casualty & Surety Company of Hartford, Conn.
- J. R. Burkey, Resident Deputy Director, Bureau of Bridges. Southern Surety Company of New York.
- H. C. Miller, Resident Division Deputy Director, Division No. 7. Southern Surety Company of New York.