

could not be used for street cleaning purposes or for the installation of traffic lights. It therefore is clear that by reason of the addition of the language "cleaning and clearing" in connection with the enumeration of the purposes for which the fund under consideration may be used by municipalities with respect to streets, as set forth in the amendment, said fund may be used for the purpose of cleaning and clearing streets.

The question is now presented as to whether said funds may be used for the purchasing of machinery with which to accomplish the above purpose. With reference to your question it will be helpful to consider the case of *State ex rel. v. Columbus*, 21 O. A. 1, in which it was held that a sand dryer could be purchased by the municipality with the gasoline tax funds distributed to it under Section 5537, of the General Code, which then required that such funds be expended "for the sole purpose of maintaining and repairing public streets and roads within such corporation." By analogy it is believed that the Columbus case, above mentioned, is dispositive of the question you present. In that case the statute made no express provision relative to the purchase of machinery.

The act to which you refer after providing for the distribution of the fund for five distinct purposes, as a sixth purpose, distributes seventeen and one-half per cent of said highway construction fund to the townships of the state. Following the language authorizing the distribution to the townships said act contains a proviso which reads in part:

"Provided, however, that no part of said funds shall be used for any purpose except to pay in whole or part the contract price of any such work done by contract or to pay the cost of labor in constructing, widening and reconstructing such roads and highways and the cost of materials forming a part of said improvement; provided further that no portion of such funds shall be used for the purchase of road machinery or equipment; and, provided further that all such improvement of roads shall be under the supervision and direction of the county surveyor as provided in section 3298-15k of the General Code: * * "

An analysis of the act as a whole, clearly discloses that the proviso above mentioned only has application to the funds distributed to the townships.

By way of specific answer to the inquiry propounded, it is my opinion that funds distributed to municipalities under the provisions of Section 5541-8, of the General Code, as amended by the 89th General Assembly (H. B. No. 7) may be used for the purchase of street sweeping and street cleaning equipment.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3398.

OFFICES INCOMPATIBLE—TOWNSHIP CONSTABLE AND CITY FIRE MARSHAL.

SYLLABUS:

A duly elected township constable may not concurrently hold a position under the classified service of a city.

COLUMBUS, OHIO, July 3, 1931.

HON. JOHN W. BOLIN, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—Your recent request for my opinion reads:

“We have in our county and in Athens Township, a duly elected constable who has accepted an appointment under Civil Service as fire marshal for the city and he makes his residence in the building furnished for the Athens City jail, taking care of the prison and driving the fire truck.

I feel that these positions of constable and fire marshal are inconsistent and that he is holding the constable job illegally or vice versa.”

Section 486-23, General Code, relative to civil service employes, provides in part:

“ * * * Nor shall any officer or employe in the classified service of the state, the several counties, cities and city school districts thereof be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinions.”

This office has often held that one who is elected by the people is in politics.

1928 Opinions of the Attorney General, 1119.

1929 Opinions of the Attorney General, 837.

1929 Opinions of the Attorney General, 1904.

In an opinion found in the 1929 Opinions of the Attorney General, 1619, after reviewing the various authorities on the question, I stated:

“These opinions clearly disclose that one may not hold a public office whether elective or appointive and at the same time be in the classified civil service of the state.”

While the above quotation refers to the classified service of the state, it is also applicable to the classified service of a city.

Since the duly elected constable in the instant case is in politics, it follows that under the provisions of Section 486-23, supra, he may not concurrently hold a position in the classified service of a city.

In view of the foregoing, I am of the opinion that a duly elected township constable may not concurrently hold a position under the classified service of a city.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3399.

CONTRACT—BETWEEN OHIO STATE UNIVERSITY TRUSTEES ACTING THROUGH ADVISORY COUNCIL OF ENGINEERING EXPERIMENT STATION AND CO-OPERATIVE AGENCY FOR ASSIGNMENT OF ANY PATENTS TO SAID AGENCY RESULTING FROM INVESTIGATION FINANCED BY SUCH AGENCY—PROPER CONSIDERATION NECESSARY—OPINION NO. 2619 CONSIDERED.

SYLLABUS:

An agreement made by the Trustees of the Ohio State University through