

cident of his office and he is entitled to it not by force of any contract, but because the law attaches it to the office."

In Ruling Case Law, Vol. 22, page 525, it is said:

"It is a well established principle that a salary pertaining to an office is an incident of the office itself and not to its occupation and exercise."

The president of council while he is president of council, is entitled to the compensation provided for the office of president of council, and no more, and it follows that since he is still president of council while he is acting as mayor, he is entitled to the salary provided for the office of president of council and not to the salary which is provided for the office of mayor.

Specifically answering your question, I am of the opinion that the president of council who is acting as mayor during the period of the mayor's suspension, is still president of council and is not the mayor, and that he is entitled only to the compensation provided for the office of president of council, even though the mayor is removed upon the charges which were filed and because of which he was suspended, and the president of council then becomes the mayor. The time of his "becoming the mayor" does not date back to the date of the order of suspension.

Nothing in this opinion is to be construed as holding that a city council may not provide, by ordinance, that the president of council shall receive as compensation while acting as mayor, an amount equal to the salary as mayor. Such an ordinance would of course have to be passed prior to the incumbent's taking office.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1219.

BOARD OF EDUCATION—MAY NOT ISSUE NOTES IN ANTICIPATION OF BOND ISSUE WHEN SAID NOTES ARE TO BE ALLOWED TO STAND UNREDEEMED FOR PERIOD FOR WHICH SAID BONDS ARE TO RUN.

SYLLABUS:

1. *Where a board of education wishes to issue notes in anticipation of an issue of bonds, which notes are to be allowed to stand unredeemed for the period for which said bonds are to run, without actually issuing said bonds, the issue of such notes would be unauthorized and illegal.*

2. *Where such notes are issued in good faith and where a change in the financial condition of the subdivision makes possible the discharge of said notes at maturity, it is unnecessary to issue the bonds anticipated by such notes.*

COLUMBUS, OHIO, October 31, 1927.

HON. FRANK F. COPE, *Prosecuting Attorney, Carrollton, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent communication requesting my opinion upon the following:

"Under the new uniform bond act a Board of Education wishes to issue bonds without a vote of the people in compliance with Section 2293-15, and

issue notes in anticipation of said bond issue which is a small issue extending over a period of three years. Is it possible to let the notes so issued stand with the purchaser and be redeemed as they become due without completing the formality of issuing bonds?

In other words, can the Board of Education issue notes and then let the matter drag on until the notes are paid, no proceedings or resolutions having been passed before the uniform bond act went into effect?"

The section of the Code under which the board of education intends to proceed with the issuance of notes in anticipation of the issuance of bonds is no doubt Section 2293-25, General Code, as enacted in House Bill No. 1 of the 87th General Assembly (112 O. L. 364, 375). Said section reads as follows:

"Whenever the taxing authority of a subdivision has legal authority to, and desires to issue bonds without vote of the people, it shall pass a resolution or ordinance declaring the necessity of such bond issue, its purpose and amount. In such resolution or ordinance the taxing authority shall determine, and in any case where an issue of bonds has been approved by a vote of the people, the taxing authority shall by ordinance or resolution determine, whether notes shall be issued in anticipation of the issue of bonds, and if so, the amount of such anticipatory notes, not to exceed the amount of the bond issue, the rate of interest, the date of such notes, and their maturity, not to exceed two years. Such notes shall be redeemable at any interest period. A resolution or ordinance providing for the issue of notes in anticipation of the issue of bonds shall provide for the levy of a tax during the year or years while such notes run, not less than that which would have been levied if bonds had been issued without the prior issue of such notes."

Section 2293-25, supra, directs that the taxing authority of a subdivision, which desires to issue bonds without a vote of the people, shall, in the resolution or ordinance declaring the necessity of such bond issue, determine whether or not notes shall be issued in anticipation of the issue of bonds and, if so, the amount of such anticipatory notes, which must not exceed the amount of the bond issue, the rate of interest, the date of such notes and their maturity, which shall not extend beyond two years. Said section also provides that said resolution shall provide for the levy of a tax during the year or years while such notes run not less than that which would have been levied if bonds had been issued without the prior issue of such notes.

If I understand your letter correctly, it is the intention of the board of education to issue notes maturing in two years in anticipation of an issue of bonds to mature in three years but to allow said notes to stand unredeemed until the end of three years, without actually issuing the bonds. In other words, it is apparently the intention of the school board to proceed as though bonds were to be issued, issue notes in anticipation of such issue of bonds, and then permit the notes to run for the term of the proposed bond issue, which is a year beyond the maximum maturity authorized by statute, without issuing bonds.

Boards of education are creatures of statute and as such have only those powers which are specifically conferred upon them by statute and those which are incident to the powers so conferred. Section 2293-25, General Code, supra, authorizes the issuance of notes in anticipation of the issuance of bonds. It follows that unless it is proposed to issue bonds, there is no authority to issue such notes. The theory of the law pertaining to bonds is that where a subdivision proposes to incur any indebtedness for an improvement, such indebtedness shall be evidenced by bonds. The notes authorized by Section 2293-25, supra, are a temporary financing proposition. Their purpose is to furnish a medium for obtaining money quickly so that funds may be

available for use in the construction of an improvement until such time as bonds can be issued pursuant to proper legislation. It was never the intention that the indebtedness of a subdivision should be evidenced by notes. Such notes are purely temporary in character and, as provided in Section 2293-25, supra, can be issued only in anticipation of the issuance of bonds. There is, of course, authority in Section 2293-4, General Code, for a subdivision to borrow money and issue notes in anticipation of the collection of current revenues in and for any fiscal year, but such notes may run for a period of six months only and the proceeds therefrom may be used only for the purposes for which the anticipated taxes were levied, collected and appropriated.

Section 2293-4, General Code, provides:

"In anticipation of the collection of current revenues in and for any fiscal year, the taxing authority of any subdivision may borrow money and issue notes therefor, but the aggregate of such loans shall not exceed one-half of the amount estimated to be received from the next ensuing semi-annual settlement of taxes for such fiscal year as estimated by the budget commission, other than taxes to be received for the payment of debt charges, and all advances. The sums so anticipated shall be deemed appropriated for the payment of such notes at maturity. The notes shall not run for a longer period than six months and the proceeds therefrom shall be used only for the purposes for which the anticipated taxes were levied, collected and appropriated. No subdivision shall borrow money or issue certificates in anticipation of the February tax settlement before January first of the year of such tax settlement."

The notes which the board of education referred to in your letter proposes to issue clearly do not fall within the class referred to in the above section.

From what has been said above, it seems clear that where a board of education or the taxing authority of any other subdivision proposes to issue notes in anticipation of an issue of bonds, knowing from the beginning of the proceedings that bonds are not to be issued, the issue of such notes would be illegal. There exists, of course, the possibility that where notes are issued in good faith, in anticipation of an issue of bonds, the issue of such bonds may become unnecessary because of a change in the financial condition of the subdivision through circumstances such as the receipt of gifts or bequests, a substantial and unanticipated increase in the tax duplicate, or the receipt of funds from other unanticipated sources, which, together with the funds derived from the tax levy hereinafter discussed, make it possible to pay or otherwise discharge said notes at maturity. Nothing in this opinion is to be construed as holding that where notes are issued in good faith, in anticipation of an issue of bonds, and where a change in the financial condition of the subdivision makes possible the discharge of said notes at maturity, such bonds must in any event be issued.

There exists another reason for holding that the proposed note issue referred to in your letter would be illegal.

Your attention is directed to that provision of Section 2293-25, supra, which provides that a tax shall be levied during the year or years while such notes run, not less than that which would have been levied if bonds had been issued. The clear import of this language seems to be that no tax can be levied beyond the year or years during which such notes run unless the bonds in anticipation of which such notes have been issued are actually issued, as provided in Section 2293-26 of the General Code. This section provides that when the notes are about to fall due, the taxing authority shall adopt a resolution or ordinance determining whether the bonds are to be issued in one lot or in installments and fixing the amount of the bonds to be presently issued which shall not be greater than the amount authorized, etc. There being no authority

in Section 2293-25, General Code, for the levying of a tax beyond the period during which such notes are to run, which period can never be longer than two years, there can be no source of revenue for the discharge of said notes beyond said two year period. In other words, under the state of facts which you have submitted, there would be no source of revenue during the third year, that is, the year following the maximum maturity of such notes from which funds could be obtained to pay said notes.

For the foregoing reasons, it is my opinion that where a board of education wishes to issue notes in anticipation of an issue of bonds, which notes are to be allowed to stand unredeemed for the period for which said bonds are to run, without actually issuing said bonds, the issue of such notes would be unauthorized and illegal.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1220.

DOG WARDEN—COMPENSATION—MAY BE APPROPRIATED FROM
DOG AND KENNEL FUND BY COUNTY COMMISSIONERS—LIMIT
OF APPROPRIATION.

SYLLABUS:

A board of county commissioners has authority to provide by appropriation from the dog and kennel fund collected prior to August 10, 1927, the effective date of H. B. No. 164, (112 O. L. 347) for the purpose of compensating a county dog warden or deputies. The amount of money which such board may lawfully appropriate for such purpose is a matter within its discretion; but in no event may such board appropriate more than fifty per cent of the gross receipts of such fund, not more than three-tenths of which amount so appropriated may be expended by the county auditor for registration tags, blanks, records and clerk hire.

COLUMBUS, OHIO, October 31, 1927.

HON. ISAAC E. STUBBS, *Prosecuting Attorney, Cambridge, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date which reads as follows:

“I would like to have your opinion as to whether the County Commissioners can appropriate sufficient funds out of the dog and kennel fund already collected and on hands before the taking effect of the new dog law, for the purpose of paying the salary or compensation to a county dog warden.

You will realize that practically all of the funds in the dog and kennel fund have been collected under the old law, and the point that is bothering me is as to whether or not we have a right to take a part of those funds for paying the dog warden's salary for the balance of this year, or before the funds have been collected under the new law.”

Prior to August 10, 1927, the effective date of H. B. No. 164, passed by the 87th General Assembly (112 O. L. 347), Sections 5652-12 and 5652-13, General Code, read as follows: