

Code, so construed, would be to repeal by implication the provisions of Sections 9921-4 and 9921-5, General Code, imposing a limitation upon the amount that the county commissioners of a county are authorized to appropriate for the compensation and expenses of the county agricultural agent of such county.

It is a well recognized rule of statutory construction, however, that "where two affirmative statutes exist one is not to be construed to repeal the other by implication unless they can be reconciled by no mode of interpretation." In Re: Hesse 93 O. S. 230, 234.

As above noted the later provisions of Section 9921-6, General Code, can be easily reconciled with those of Sections 9921-4 and 9921-5, General Code, by confining the authority granted by the provisions of Section 9921-6 to appropriations made by the county commissioners of a county under this section for means of extending the service of the college of agriculture and the development of agricultural life in the county, other than the employment and service of a county agricultural agent.

On the foregoing considerations, therefore, I am constrained to adhere to my former opinion above referred to.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1576.

COSTS—COMMON PLEAS COURT—NO AUTHORITY TO REQUIRE PAYMENT OF ADVANCED COSTS IN ACTION INSTITUTED BY STATE OF OHIO.

SYLLABUS:

There is no authority to require the payment of advanced costs in an action instituted by the State of Ohio in the common pleas court of Hamilton County.

COLUMBUS, OHIO, January 14, 1928.

HON. CLARENCE A. DORGER, *Special Counsel to Attorney General, Cincinnati, Ohio.*

DEAR SIR:—This will acknowledge your letter of January 9th, as follows:

"I am under the impression that Section 348 of the General Code exempts the state from paying the customary \$1.35 advanced cost when filing a petition in the common pleas court. The clerk of courts in this county refuses to accept our petitions without paying the advanced costs, which are \$1.35.

Will you kindly send me a ruling on this section as applied to the above facts?"

Section 348 of the General Code is in the following language:

"No undertaking or security shall be required on behalf of the state or an officer thereof, in the prosecution or defense of any action, writ or proceeding. In an action, writ or proceeding it shall not be necessary to verify the pleadings on the part of the state or any officer thereof."

Manifestly this section is general in its application and applies to all proceedings in any court in the state and consequently it is effective to prevent the requirement of any "undertaking or security" of the state either as a condition precedent to the institution of an action or at any time during the course of the action.

You do not advise me the nature of the action in which the clerk is insisting upon the payment of advanced costs, but, since you refer to this payment as "customary," I assume that this is a requirement of general application to any kind of an action instituted in the common pleas court of Hamilton County.

Section 11614 of the General Code provides as follows :

"If not a resident of the county in which the action is brought, or a partnership suing by its company name, or an insolvent corporation, the plaintiff must furnish sufficient security for costs. The surety must be a resident of the county and approved by the clerk. His obligation shall be complete by indorsing the summons, or signing his name on the petition as surety for costs. He shall be bound for the payment of the costs which may be adjudged against the plaintiff in the court in which the action is brought, or in any other court to which it may be carried, and for all costs taxed against the plaintiff in such action, whether he obtain judgment or not."

Section 11615 of the Code authorizes the deposit of a sum of money as security. Obviously, these sections do not have any application to actions instituted by the state or in its behalf, since it can scarcely be said that the state is not a resident of the county in which the action is brought, so that, irrespective of the provisions of Section 348 of the Code, no deposit could be required under this section.

There are other sections governing special cases in which security for costs is required, but I need not refer to them in detail. In my opinion the provisions of Section 348 of the Code are entirely dispositive of the contention of the clerk in this instance, since the word "security" certainly would cover the requirement of the deposit of money as advanced costs.

It is possible that this uniform practice requiring advanced costs is the result of a court rule to that effect. Special authority is given to the common pleas court of Hamilton County to provide for court rules by Section 1556 of the General Code. The constitutionality of that section is doubted by the Supreme Court in the case of *State ex rel. vs. LeBlond*, 108 O. S. 126, but the court goes on to say as follows :

"We are of the opinion, however, that courts have the inherent right to formulate rules for their government, so long as such rules are reasonable and not in conflict with general laws. The right to make rules must be held to come within the implied powers and courts of justice. The legislature has never prescribed in minute detail all of the procedure necessary in conducting courts of justice in an orderly manner, and many things must necessarily be left to the sound discretion of the court, and it is, of course, desirable that as far as possible those details be carried out in an orderly manner and according to a published rule. The implied powers of a court in this respect present a striking analogy to the implied powers of legislative bodies, a discussion of which is found in the celebrated case of *McCulloch vs. Maryland*, 4 Wheat. (17 U. S.), 316, 4 L. Ed., 579. If we should paraphrase the able and far-famed declaration concerning implied powers in that case, and apply the same to the implied and inherent powers of the courts, the following result would be attained. Let the ends be legitimate, let them be within the scope of the express powers conferred by the constitution and statutes, and any means which are

appropriate, and which are plainly adapted to that end, and which are not prohibited, but consistent with the letter and spirit of the constitution and statutes, are lawful."

You will observe that the court recognizes the inherent right of courts to make reasonable rules, subject, however, to the qualification that such rules shall not be in conflict with general laws. If, therefore, the court in this instance has made a rule requiring the payment of \$1.35 as advanced costs in every instance, the application of such rule to the state would, in my opinion, be in conflict with Section 348 of the General Code. In so far as the rule, if there be one, and the statute just referred to are in conflict, the statute must control.

I am, therefore, of the opinion that there is no authority to require the payment of advanced costs in an action instituted by the State of Ohio.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1577.

ELECTION—CANDIDATE SERVING AS JUDGE OR CLERK OF ELECTIONS—INELIGIBLE TO OFFICE—FILLING OF VACANCY IN BOARD OF EDUCATION OF VILLAGE OR RURAL SCHOOL DISTRICT.

SYLLABUS:

1. *A candidate, who serves as a judge or clerk of elections of any precinct of a school district, when an election is being held for member of the board of education for the district, is ineligible to the office of member of such board of education, although he receives sufficient votes to elect him.*

2. *When a vacancy occurs in the board of education of a village or rural school district, said vacancy should be filled by a majority vote of the remaining members of said board of education, by election for the unexpired term. If said board fails to fill such vacancy for a period of thirty days after the same occurs, it becomes the duty of the county board of education, of the district of which the local district is a part, to fill such vacancy.*

COLUMBUS, OHIO, January 14, 1928.

HON. H. E. CULBERTSON, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication requesting my opinion as follows:

"Who appoints the fifth member of a school board in case of a hopeless tie?"

Is such a vacancy created when a member of a local election board is a candidate for school board with his name on the ballot printed, if the other precincts in the district cast enough votes to elect without the vote of that precinct?

In this case the party filed no expense account and did not try to qualify. Can he do so now? If so the first question is answered."