This ordinance was passed on January 6, 1925, and following the passage thereof, without any further proceedings as to the amount of the issue, bonds were advertised for sale on February 12, 1925, in the sum of $4,191.48 in annual payments of $465.72. This sale of bonds is not in compliance with the bond ordinance, and I find no authority for the issue as advertised and sold.

2. The assessing ordinance has not been published. Section 4227, General Code, provides in part:

> "Ordinances of a general nature or providing for improvements shall be published as hereinafter provided before going into operation. No ordinance shall take effect until after the expiration of ten days after the first publication of such notice."

I know of no exception having been provided for this general statute, except as found in section 3914, General Code, as amended in 110 O. L., page 458. This section provides for the issuance of bonds in anticipation of the collection of special assessments as follows:

> "Council ordinances and proceedings relating to the issuance of such bonds or notes shall not require publication."

It will be observed that this exception only applies to the bond or note ordinance and no other. As a matter of fact section 3914, General Code, contemplates that the bond ordinance shall not be passed until the amount of the assessments remaining unpaid has been determined, and shall not include any cash assessments. For this reason, publication of the assessing ordinance is especially required, and for the same reason provision has been made that the publication of the bond ordinance may be omitted and go into immediate effect.

3. The assessments have not been certified to the county auditor. The legal adviser of the village in reply to a request for a certificate that the assessments have been certified to the county auditor, recites that the law provides that the assessments may be certified not later than September 1st of each year. This issue with the assessments may be certified as late as September 1st, and be available to pay bonds maturing after the collection of same in December, but I have had my attention frequently called to instances where the assessments have not been certified and in process of collection before the bonds shall be passed by this department.

On account of the officials of the village having failed to take the necessary proceedings to make this issue in proper form. I am compelled to disapprove the same, and advise you not to purchase said bonds.

Respectfully,
C. C. CRABBE,
Attorney General.

2374.

QUESTIONS RELATING TO FEES OF PROBATE JUDGES IN INHERITANCE TAX PROCEEDINGS DISCUSSED.

SYLLABUS:

Certain questions as to fees of probate judges in inheritance tax proceedings, answered.

COLUMBUS, OHIO, April 13, 1925.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Receipt is acknowledged of your letter of recent date reading as follows:

> "You are respectfully requested to furnish this department your written opinion upon the following:
>
> "Section 5348-10a, General Code, as enacted 109 O. L. 531, provides a fee for probate judges in inheritance tax proceedings. The amount of the fee is five dollars in each inheritance tax proceeding in which tax is assessed and collected and three dollars in each inheritance tax proceeding in which no tax is found. It was held by the supreme court that probate judges in office at the time this act was passed could not legally retain these fees for their own use. Successors to the probate judges in office at the time the act was passed began their terms on the 9th day of February, 1925, and will be entitled to retain such fees.
>
> "Question 1. In case a probate judge by reason of a vacancy come into office after the passage of the act and has been receiving for his own use the fees provided therein and his successor was elected taking office on the 9th day of February, 1925, would such successor be entitled to receive and retain for his own use the fees in proceedings filed prior to February 9th and pending but not determined on that date, or would the probate judge whose term expired February 9th be entitled to the fees?
>
> "Question 2. In case a probate judge whose term expired February 9th, has not been entitled to retain the fees by reason of the fact that he was in office at the time the act was passed and who succeeds himself on February 9th, would such probate judge be entitled to retain the fees for his own use in proceedings filed prior to February 9th and not determined on that date, or would he be required to account for same to the county treasury?
>
> "Question 3. In case a probate judge who has not been entitled to receive for his own use the fees in question is succeeded by another on February 9th, will the successor of such probate judge be entitled to receive such fees and retain the same for his own use in proceedings filed prior to February 9th but not determined on that date?
>
> "In this connection we would refer you to an opinion of the Attorney General in his 1921 report at page 716."

The opinion to which you refer was rendered to Hon. Walter S. Ruff, prosecuting attorney, Canton, Ohio, in answer to an inquiry as to whether a probate judge was entitled to the fee on estates filed prior to the taking effect of section 5348-10a G. C., which was September 6, 1921. The second paragraph of the syllabus of said opinion reads:

> "2. Probate judges are entitled to the fees specified in said section on all estates inheritance tax proceedings which are filed after September 6, 1921, when the new law takes effect. They are not entitled to such fee in inheritance tax proceedings filed before that date."

Section 5348-10a G. C. reads:

> "For services performed by him under the provisions of this chapter each probate judge shall be allowed a fee of five dollars in each inheritance tax proceeding in his court in which tax is assessed and collected and a fee

of three dollars in each such proceeding in which no tax is found, which fees shall be allowed and paid to such judges as the other costs in such proceedings are paid but are to be retained by them personally as compensation for the performance by them of the additional duties imposed on them by this chapter. Provided, always, however, that the amount paid to any probate judge under this section shall in no case exceed the sum of three thousand dollars in any one year."

In said opinion hereinbefore mentioned, it is stated that:

"However, in case the inheritance tax proceeding was filed prior to September 6, * * * it is the opinion of this department that in such cases no fees under the new supplementary section are collectible by the probate judge. The reasons for that conclusion may be expressed as follows:

"The probate judge in such a case might have performed all the services incumbent upon him under the law, with the exception of some final formality such as the issuance of the certificate to the county auditor. It could not have been the intention of the legislature that the entire fee should be drawn for the performance of the slight service that was performed after the new law went into effect; neither can it have been the intention of the general assembly that the fee should be charged and collected for services performed before the new law went into effect. Inasmuch as it is impracticable to draw any line short of the filing of the inheritance tax proceedings, it is concluded that in order to be the predicate of fees under the new section the whole proceeding must be had after the section goes into effect. This is consistent with the language of the section itself, applied in the light of the elementary proposition that all statutes are to be given a wholly prospective meaning unless the contrary intention clearly appears. In the first place, the section bases the fees upon 'services performed * * * under the provisions of this chapter.' That is to say, the one fee covers all services which may be performed in a given proceeding under the inheritance tax law; it is a lump fee covering all such services. If, then, in deference to the principle above stated we understand the word 'hereafter' before the word 'performed,' we get the result that all the service for which the fee is to be charged and collected must have been performed after the new law went into effect; so that if any part of it was performed before the new law went into effect it is not governed by that law."

It is evident from the foregoing statements that:

a. One fee covers all services which may be performed in a given proceeding under the inheritance tax law; it is a lump sum covering all services.

b. There is no provision for apportioning the fee between two judges for services respectively performed in any one case.

c. A probate judge in order to draw the prescribed fee must have performed all of the services in that particular case.

d. Each case begins with the filing of the application to determine the tax.

Reasoning from the foregoing it follows that:

a. If the services are partly performed by a probate judge and finished by his successor, each of whom would have been entitled to the fee for the entire service, after February 9th, neither is entitled to the prescribed fee.

b. If the services are performed in part by a probate judge who is not entitled to the fee and finished by a probate judge who is entitled to the fee, if he

performs all the services, the latter judge may not collect the fee for his own use.

In other words, no question can arise as to those judges who were not entitled to fees, prior to February 9, 1925; and no fee is collectible by those judges who only complete the proceedings begun by those not entitled to the fee. As between two probate judges who would each be entitled to the fee if he had performed the entire service, neither is entitled to the fee for the partial performance of said service.

It is therefore believed that in accordance with the opinion referred to, the answer to your first question is that neither judge is entitled to the fee.

In answering your second question, the probate judge is not entitled to the fee for his personal use but should account for same to the county treasury.

In answering the third question, the succeeding judge is not entitled to retain the fees for his own use in proceedings filed prior to February 9th, but not determined on that date.

Respectfully,
C. C. CRABBE,
Attorney General.

2375.

AUTHORITY OF ENTRANCE EXAMINER UNDER PROVISIONS OF SECTION 1270 G. C. DISCUSSED.

SYLLABUS:

Under section 1270, General Code, the entrance examiner may refuse to accept a certificate of graduation from a legally constituted high school if his examination shows that same was not secured after a four year course of study.

COLUMBUS, OHIO, April 13, 1925.

HON. H. M. PLATTER, *Secretary State Medical Board, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication as follows:

"Section 1270 of the General Code of Ohio states, among other things, that the following educational credentials shall be sufficient for a preliminary certificate, viz.: 'A diploma from a legally constituted normal school, high school or seminary issued after four years of study.'

"Recently a certificate of graduation from a private first grade high school in Cleveland was sent to this office for one M. L. M. I had reason to question the validity of the credits upon which this certificate of graduation was issued. In digging into the matter I found that M. L. M. came to this country after having studied supposedly at an out of the way place in the Carpathian Mountains in Hungary. He had no papers, no credits, no affidavits, not anything to show from this school.

"However, he presented his case to the State Department of Education and they allowed him ten units of credit for this work. According to American Standards he should then have been sixteen and one-half years of age to achieve this credit in an American high school. He told me, however, that he left Hungary before he was sixteen.