

"The act of February 4, 1920 (108 O. L. Part 2, 1301) so far as it applies to a judge of the court of common pleas in office at the time the act took effect is violative of Article IV, Section 14 of the Constitution of Ohio, and therefore void regardless of the source of payment of the salary."

So far as the increase in per diem compensation for judges holding court outside the county of their residence is concerned, in view of the language of Section 14, Article IV, supra, I am unable to see any difference in principle from the compensation provided for them by way of regular salary.

I am therefore of the opinion that the increase in compensation for common pleas judges by way of salary and per diem compensation for holding court outside the county of their residence as provided by the terms of House Bill No. 61 of the 87th General Assembly does not inure to the benefit of judges, during the remaining portion of their present term who were in office at the time the act became effective.

Respectfully,
EDWARD C. TURNER,
Attorney General.

969.

TRANSFER OF FUNDS—BOND PAYMENT FUND—HOUSE BILL NO. 80,
87TH GENERAL ASSEMBLY, DISCUSSED.

SYLLABUS:

1. *By virtue of Section 39 of House Bill No. 80, passed by the 87th General Assembly, the repeal of Sections 2296 et seq., and Section 3799 of the General Code is postponed until January 1, 1928, and transfers of funds may be effected in accordance with the provisions of said Sections 2296 et seq., and Section 3799, General Code, prior to January 1, 1928 to the same extent and in the same manner as might have been done prior to the effective date of said House Bill No. 80.*

2. *Prior to January 1, 1928, such portion of the funds of the "bond payment fund" of a municipality not needed for the liquidation of bond or interest obligations and the source of which is other than the proceeds or balances of special levies, loans or bond issues, may be transferred to other funds of the municipality by order of the common pleas court, upon application therefor, in accordance with the provisions of Sections 2296 et seq., of the General Code.*

COLUMBUS, OHIO, September 8, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your communication as follows:

"Sections 2296 et seq. and 3799 G. C., providing for transfers between funds were repealed by House Bill No. 80 passed April 13, 1927, and effective August 10, 1927. The second paragraph of Section 39 of said H. B. 80 provides that 'this act shall in no manner affect existing funds established in any subdivision or the expenditures therefrom until January 1, 1928, but upon such date all provisions of this act as to funds shall go into force and effect, and the balance, if any, in any special fund derived from a special tax levy within

the fifteen mill limitation that is abolished by this act shall be credited to the appropriate general fund unless otherwise provided by law.'

The village of ----- has a balance of \$4,000.00 in its sinking fund at the present date but all bonds and interest have been paid and there are no other obligations to be liquidated by the use of said fund. The water works is badly in need of repairs and the village officials desire to use the sinking fund balance for such purpose.

QUESTION: Is there any legal method of transferring said sinking fund balance to the water works fund at this date?"

House Bill No. 80 enacted by the 87th General Assembly, which became effective August 10, 1927, is entitled "An Act—Providing for levying of taxes by local subdivisions and their method of budget procedure, and repealing Sections 2034 * * * of the General Code.

Section 9 of this Act, (Section 5625-9, General Code), provides for the establishing by each subdivision of nine distinct funds according to the use for which the funds are intended. Section 13, codified as Section 5625-13, General Code, provides in part, as follows:

"No transfer shall be made from one fund of a subdivision to any other fund by order of court or otherwise except that transfers may be made from the general to special funds established for purposes within the general purposes of the general fund and from such funds to the general fund. * * *"

Section 39 of the Act, codified as Section 5625-39, General Code, provides in part as follows:

" * * * That this act shall in no manner affect existing funds established in any subdivision or the expenditures therefrom until January 1, 1928, but upon such date all provisions of this act as to funds shall go into force and effect, and the balance, if any, in any special fund derived from a special tax levy within the fifteen mill limitation that is abolished by this act shall be credited to the appropriate general fund unless otherwise provided by law. * * *"

It seems apparent from the provisions of Section 39, supra, that inasmuch as the existing funds and the expenditures therefrom are to remain unaffected until January 1, 1928 and the further provision that:

"Upon such date all provisions of this act as to funds shall go into force and effect"

the creation of the several funds as provided for by Section 9 is postponed until January 1, 1928. It is equally clear that the provisions embodied in Section 13, supra, as to transfers could not become effective until January 1, 1928, as no reasonable construction could be placed on the language of Section 13 other than that it refers to the funds the establishment of which is authorized by the same legislative act of which it is a part.

By the provisions of said House Bill No. 80, Sections 2296 et seq., General Code, providing for the transfer of funds by application to the common pleas court and Section 3799 providing for the transfer of funds of the municipality by its council or other legislative authority are specifically repealed.

It follows that if the transfer of existing funds which remain unaffected until January 1, 1928, is not governed by Section 13 which is the only remaining provision

by which the transfer of the funds of a municipality may be effected, there is no way by which such funds may be transferred during the interim between the effective date of House Bill No. 80 and January 1, 1928, unless the repeal of Sections 2296 et seq., and Section 3799, General Code, is likewise postponed until January 1, 1928.

Inasmuch as the saving clause as contained in Section 39, supra, keeps intact all existing funds and provides that no provision of the act shall affect expenditures from such funds until January 1, 1928, I am of the opinion that the transfer of such funds may be made prior to January 1, 1928, in accordance with the provisions of law providing for the transfer of such funds which were in force prior to the effective date of House Bill No. 80 even though the said provisions of law were specifically repealed by the act. That is to say, it is my opinion that because of the terms of the saving clause contained in Section 39, supra, the repeal of Sections 2296 et seq., and Section 3799 is not effected until January 1, 1928.

By the provisions of Section 2295-14, General Code, boards of sinking fund commissioners or trustees were abolished after the payment of all outstanding bonds issued prior to January 1, 1922, and all powers and duties which formerly reposed in said boards of sinking fund commissioners or trustees were transferred to the treasurer of the county, municipality or school district, as the case might be. By the terms of the same section, it was provided that when all the bonds which had been issued prior to January 1, 1922, should have been paid all moneys, securities and other assets in the custody and possession of such board of sinking fund commissioners or trustees should be transferred and delivered to the treasurer, and the moneys so transferred to him were to be placed and held by him in a separate fund to be known as the "bond payment fund" and, subject to the provisions of law relating to transfer to other funds, the said fund was to be applied by the said treasurer to the purposes for which the sinking fund had theretofore been applicable.

From the state of facts which you have outlined with reference to the village of -----, the \$4,000 which you speak of as being in the village sinking fund should be considered as being in the bond payment fund under the control of the village treasurer.

Prior to the enactment of House Bill No. 80, transfers of funds from a municipality might be made by virtue of Sections 2296 et seq., or Section 3799, General Code. Section 2296, General Code, reads as follows:

"The county commissioners, township trustees, the board of education of a school district, or the council or other board having the legislative power of a municipality, may transfer public funds, except the proceeds or balances of special levies, loans or bond issues, under their supervision, from one fund to another, or to a new fund created under their respective supervision, in the manner hereafter provided, which shall be in addition to all other procedure now provided by law."

Section 3799, General Code, provides:

"By the votes of three-fourths of all the members elected thereto, and the approval of the mayor, the council may at any time transfer all or a portion of one fund, or a balance remaining therein, except the proceeds of a special levy, bond issue or loan, to the credit of one or more funds, but there shall be no such transfer except among funds raised by taxation upon all the real and personal property in the corporation, nor until the object of the fund from which the transfer is to be effected has been accomplished or abandoned."

It will be observed that by the terms of Section 3799, supra, council is limited in making transfers to transfers of moneys raised by taxation upon all the real and personal property in the corporation and to funds which are not proceeds of special levies, bond issues or loans.

As the funds which make up a sinking fund or bond payment fund are either the proceeds of special levies, bond issues or loans, or funds derived from sources other than taxation on all the real and personal property within the corporation, a municipal council would have no authority at any time to transfer from these funds to another fund by virtue of Section 3799, General Code.

The transfer contemplated by Sections 2296 et seq., is limited only to the extent that the proceeds or balances of special levies, loans or bond issues can not be transferred but this section does not provide as does Section 3799, General Code, that transfers can be made only among funds raised by taxation upon all the real and personal property in the corporation.

If it can be shown that a balance remaining in a sinking fund or bond payment fund consists of funds *other* than the proceeds or balances of special levies, loans or bond issues and there are no obligations to be liquidated by the use of said funds, it is my opinion that transfers of such funds may be effected prior to January 1, 1928, by order of the common pleas court in accordance with the procedure provided for by Sections 2296 et seq., of the General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

970.

CANAL LANDS—LEASES—RAILWAY COMPANIES WHOSE TRACKS
CROSS CANAL LANDS—ABANDONED CANAL LANDS TO BE LEASED
TO CITY OF DAYTON.

SYLLABUS:

1. *Railway companies whose tracks cross canal lands abandoned by the legislature by act of the General Assembly (111 O. L. 208) which did not have leases from the state for the lands occupied in crossing, are not now entitled to leases therefor from the state.*

2. *All lands abandoned by the Act of the General Assembly (111 O. L. 208), for which the city of Dayton has applied for a lease, should be appraised at their true value in money. Also all existing leases on such lands, other than ones surrendered under the provisions of the Act and new leases given thereon, should be appraised at their true value in money for any purpose for which the land can be used.*

COLUMBUS, OHIO, September 8, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your letter of recent date in which you say:

“A difference of opinion exists between the members of the Appraisal Board appointed by the Governor to appraise the abandoned Miami and Erie