

3576.

APPROVAL, BONDS OF CUYAHOGA COUNTY, OHIO—\$100,000.00.

COLUMBUS, OHIO, December 5, 1934.

Industrial Commission of Ohio, Columbus, Ohio.

3577.

APPROVAL, BONDS OF UHRICHSVILLE CITY SCHOOL DISTRICT, TUSCARAWAS COUNTY, OHIO—\$14,789.21.

COLUMBUS, OHIO, December 5, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3578.

APPROVAL, BONDS OF SHELBY COUNTY, OHIO—\$20,400.00.

COLUMBUS, OHIO, December 5, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3579.

BOARD OF ELECTION—AUTHORITY TO COMBINE MUNICIPALITY AND TOWNSHIP PRECINCT FOR ELECTION PURPOSES DISCUSSED.

SYLLABUS:

1. The board of elections of a county is authorized to combine a municipality, wherein less than one hundred votes were cast as provided by Section 4785-22, General Code, provided notice thereof is given required by Section 4785-24, General Code.

2. Where a municipality which has been so combined with a township precinct holds a special election, for the purpose of submitting the question of a bond issue to the electors of such municipality, such election shall be held at the regular place of holding elections in such precinct as fixed by the board of elections, and in such case the expenses of such special election must be charged against such municipality.

3. At such special election the electors residing in such precinct outside of the limits of the municipality, would have no right to vote.

4. The fact that a municipality has been so combined with a township precinct

for election purposes would not affect the distribution of the undivided liquor permit fund, as provided in Section 6064-29, General Code.

COLUMBUS, OHIO, December 6, 1934.

HON. JOSEPH J. LABADIE, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads in part as follows:

"I am writing you relative to a situation which has arisen in one of the townships in Putnam County. The Village of Cloverdale, Ohio, has a population of around two hundred and twenty-seven persons and is a duly organized and existing municipal corporation.

In June, 1933, the Board of Elections of Putnam County consolidated the voting precinct of the village of Cloverdale with the south precinct of the township in which the village is located, thus leaving no voting precinct in the municipal corporation. This raises several questions to be settled between the officials of the corporation and the township trustees.

Has the Election Board of a county, with or without the approval of the State officials, the power and authority to consolidate a municipal corporation precinct and a township precinct, thus wiping out the voting precinct in the municipal corporation?

If the people in a municipal corporation desire to hold a special election for purposes provided by law, is such election to be held in the corporation, at a designated place, or must it be held in the voting place for the township, and who are the electors who are eligible to vote on such a question, and who is required to pay the expenses of holding such a special election? It does not seem proper that on a question to be voted on which applies only to the municipal corporation, that the electors of the entire precinct outside the corporation should be granted a vote as they are not affected by any municipal question, and vice versa as to any question to be voted on by the township outside of the municipal corporation, in the precinct which includes the corporation.

It is also true that some of the members of the precinct Election Board reside in the corporation and some out of the corporation. How are they to act on various questions that may come up for special elections?

I am also advised that the voting is done in the town hall of the village, although the township has a township hall in the corporation where its electors formerly voted, but which was abandoned by the election board. What disposition is to be made of this property?

It so happens that a person residing in the municipal corporation obtained a permit to sell beer under the new liquor control act. When he paid the fee to the State Department he answered the question on his blank that the voting precinct was in the township and designated it. Consequently when the money was distributed by the State Treasurer under Section 6064-29, the check for the permit fee came to the township trustee. The township clerk has been requested by the officials of the municipal corporation to pay this money or liquor fee,

over to the corporation treasurer. This he has refused to do, maintaining that the precinct is in the township and that the expenses and costs of elections are mostly paid by the township. They desire to know whether or not they are required by law to turn over this intoxicating liquor fee to the Treasurer of the municipal corporation or whether, due to the facts as above stated, they are entitled to keep it in the treasury of the township. Section 6064-29 seems to be clear on this point but considerable difficulty has arisen because of the fact that the voting precinct in the corporation has been wiped out and consolidated with the township precinct.

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Section 4785-13, General Code, gives to boards of elections the power "to establish, define, provide, rearrange and combine election precincts."

Section 4785-21, General Code, reads as follows:

"The board, when it deems it necessary for election administration purposes, may divide a political subdivision, within its jurisdiction, into precincts or districts and may change the boundaries thereof. The election returns shall be compiled and reported by the board both according to such precincts or districts."

Section 4783-22, General Code, reads in part as follows:

"The board shall have authority, in the manner provided by law, to establish, define, divide, rearrange and combine the several election precincts within their jurisdiction as often as it is necessary to maintain the requirements as to the number of voters in a precinct, and to provide for the convenience of the voters and the proper conduct of elections. Each precinct shall be compact in form and shall not contain portions of two civil divisions. Each precinct shall contain as nearly as practicable four hundred electors, based upon the total votes cast at the election held in 1928 or in the November election every fourth year thereafter, but no precinct shall contain less than two hundred and fifty nor more than four hundred and fifty electors; except that a township or a village containing a less number of voters shall compose one precinct. Provided that a municipality, wherein less than one hundred votes were cast at the next preceding general election may be combined with a township precinct, and the precinct election officials shall be chosen from the precinct thus formed. * * *

Consequently, a board of elections is expressly authorized to combine a municipality, wherein less than one hundred votes were cast at the next preceding general election, with a township precinct.

Section 4785-13, paragraph "b," gives boards of elections the right to fix and provide the places for holding elections.

I know of no question that can be submitted by a municipality, which has no charter, to the electors thereof at a special election except the question of a bond issue, and section 2293-21, General Code, provides that such election shall be held at the regular place of voting in such subdivision.

Since the regular place of voting in the case you present, as fixed by the

board of elections, is in the municipal building, it follows that the special election would be held there. However, even though the regular place of holding elections in such precinct were outside of the municipality, this would not give electors residing in such precinct but outside the municipality the right to vote on a purely municipal question. Only the electors of the municipality would have the right to vote thereon. Likewise, electors residing in a municipality which was combined with a township election precinct but not residing in the township would have no right to vote on questions submitted by the township trustees to the electors of the township. The fact that a board of elections has combined a municipality with a township precinct would not make an elector residing in such precinct outside the municipality, an elector of the municipality, nor would it make an elector residing in such municipality but outside of said township an elector of the township.

The expense of holding a special election for the purpose of submitting the question of a bond issue to the electors of a municipality which has been combined with a township precinct would be borne by the municipality by virtue of section 4785-20, paragraph "c", which reads as follows:

"The cost of all special elections shall be charged against the subdivisions for and in which such elections are held."

In such case the only requirement as to precinct officials is that they must be chosen from the precinct thus formed by combining a municipality with a township precinct, and it is immaterial whether they reside inside or outside of the municipality.

The fact that the board of elections may have abandoned a township hall as a voting place does not affect the right of the township trustees to use it for the purposes permitted by law, or if the trustees by resolution find that the township does not need it, they may sell it by following the procedure outlined in section 3281, General Code.

Section 6064-29, General Code, provides for the distribution of the undivided liquor permit fund as follows:

"To each municipal corporation the aggregate amount shown by the statements to have been collected from permits therein, for the use of the general revenue fund of such municipality.

To each township the aggregate amount shown by the statements to have been collected from permits in the territory thereof outside of the limits of any municipal corporation located therein, for the use of the general revenue fund of such township."

This distribution would not be affected by reason of the fact that a municipality has been combined with a township election precinct. While a municipality and a township or part thereof may form one election precinct, this is only for election purposes and does not operate to change the corporate limits of such municipality or the boundaries of such township.

I am of the opinion therefore that:

1. The board of elections of a county is authorized to combine a municipality, wherein less than one hundred votes were cast as provided by section 4785-22, General Code, provided notice thereof is given as required by section 4785-24, General Code.

2. Where a municipality which has been so combined with a township precinct holds a special election, for the purpose of submitting the question of a bond issue to the electors of such municipality, such election shall be held at the regular place of holding elections in such precinct as fixed by the board of elections, and in such case the expenses of such special election must be charged against such municipality.

3. At such special election the electors residing in such precinct outside of the limits of the municipality, would have no right to vote.

4. The fact that a municipality has been so combined with a township precinct for election purposes would not affect the distribution of the undivided liquor permit fund, as provided in section 6064-29, General Code.

Respectfully,

JOHN W. BRICKER,

Attorney General.

3580.

REWARD—UNDER SECTION 2489, GENERAL CODE, COUNTY COMMISSIONERS UNAUTHORIZED TO PAY REWARD UNLESS PERSON DETECTED OR APPREHENDED HAS SUBSEQUENTLY BEEN CONVICTED.

SYLLABUS:

A Board of County Commissioners having offered a reward under the provisions of Section 2489, General Code, for the detection or apprehension of any person charged with or convicted of a felony, is unauthorized to pay the amount of such reward from the county treasury unless the person detected or apprehended has subsequently been convicted.

COLUMBUS, OHIO, December 6, 1934.

HON. RAYMOND E. LADD, *Prosecuting Attorney, Bowling Green, Ohio.*

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

“Mr. R. M. B., attorney and also chairman of the East Liverpool Pension Fund, has made a request of our local Board of County Commissioners that they pay to said Police Pension Fund the one thousand dollars which was offered as a reward by our Board of County Commissioners for the detention, apprehension, or information leading to the arrest and conviction of one Charles (‘Pretty Boy’) Floyd who killed a local patrolman, R. C., on April 16th, 1931. This reward was kept open and in effect at the time Floyd was killed by the East Liverpool police and Federal officers.

I wrote Mr. B. that in my opinion, under Section 2489 of the General Code, our Board of County Commissioners could only pay in the event a felon was apprehended and he was then convicted and that we could not offer a reward for a felon dead or alive, although I believe such a law would be more effective as both myself and our Sheriff received numerous letters from Oklahoma from 1931 up until Floyd was