

to be interpreted; and thus to place the court upon the standpoint of the party or parties whose intentions are to be ascertained; and to enable the court to see things in the light in which he or they saw them. And, on principle, I know of no good reason why on a question like this, we may not, in analogy to the rule referred to, look into the history and progress of the bill which finally ripened into this act, during its pendency in, and passage by the general assembly, as shown by the journal of the two houses of that body."

In the light of the foregoing discussion, I am of the opinion that when a board of education designates a bank or banks as depositories for the funds of the school district, such bank or banks may at the option of the board of education, secure the deposits of public funds by the giving of a good and sufficient bond or the deposit of the classes of securities enumerated in Sections 7605 and 7607, General Code, as amended by the 87th General Assembly.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1223.

COUNTY RECORDER—SALARY—COMPENSATION FOR OTHER LINES
OF ENDEAVOR.

SYLLABUS:

A county recorder is entitled to the salary provided for the office to which he has been elected and for which he has qualified, so long as he retains title to the office, even though he devotes his entire time to other lines of endeavor. The proceeds flowing from the other lines of endeavor to which a county recorder devotes his time and attention rightfully belong to such officer personally, and he is not required to account for the same to the county.

COLUMBUS, OHIO, October 31, 1927.

HON. GEO. E. SCHROTH, JR., *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication, as follows:

"Is it permissible for a county recorder to hire his regular duties performed by a special deputy who is paid from the county treasury and for the official to devote his entire time to other lines of endeavor without turning the proceeds from those other lines into the county treasury, or do such other proceeds rightfully belong to the official personally?"

Sections 2750 and 2754, General Code, read as follows:

Sec. 2750. "There shall be elected in each county, at the regular election in 1926, a county recorder, who shall assume office on the first Monday of September next after his election and who shall hold said office for a period of three years and four months or until the first Monday of January, 1931. There shall be elected in each county, at the regular election in 1930, and biennially thereafter, a county recorder who shall assume office on the first

Monday in January next after his election and who shall hold said office for a period of two years.”

Sec. 2754. “The county recorder may appoint a deputy or deputies approved by the court of common pleas to aid him in the performance of his duties. Such appointment or removal shall be in writing and filed with the county treasurer. The recorder and his sureties shall be responsible for his deputy, or deputies’ neglect of duty or misconduct in office. Before entering upon the discharge of his duty, the deputy or deputies shall take an oath of office.”

By the terms of Sections 2995 and 2996, General Code, the salary of the county recorder is fixed at a definite annual sum computed on the basis of the population of the county in which the recorder has been elected, in no case to exceed the sum of \$6,000 per year. Nowhere in the Code is to be found any provision whereby any deduction shall be made from the annual salary provided for a county recorder on account of his failure to perform the duties of his office.

It is stated in Throop on Public Officers, Section 443:

“It has been often held, that an officer’s right to his compensation does not grow out of a contract between him and the state, or the municipality by which it is payable. The compensation belongs to the officer, as an incident of his office, and he is entitled to it, not by force of any contract, but because the law attaches it to the office; and although, during the time for which he claims it, he has earned money in other employment.”

and again, in Section 500, the same author states:

“The general rule, applicable to this class of cases, is well stated in a case in the common pleas of the city and county of New York in the following language: ‘The right of an officer to his fees, emoluments, or salary, is such only as is prescribed by statute; and while he holds the office, such right is in no way impaired by his occasional or protracted absence from his post, or neglect of his duties. Such derelictions find their corrections in the power of removal, impeachment, and punishment, provided by law. The compensations for official services are not fixed upon any mere principle of a quantum meruit, but upon the judgment and consideration of the legislature, as a just medium for the services which the officer may be called upon to perform.’ (People vs. Green, 5 Daily (N. Y.) 254.)

An early case which is often cited by text writers when considering this subject, is the case of *Bryan vs. Cattell*, 15 Ia., 538. In this case, suit was brought to recover salary provided for the office of district attorney. Plaintiff had been elected to the office for four years. After serving one year he entered the military service and was absent from his post of duty as district attorney during the remainder of the term. The court, in sustaining a judgment for the plaintiff for the full amount of the salary provided for the office during this time, stated:

“When the statute providing for the compensation of an officer makes no provision for a deduction for absence or neglect of duty he is entitled to the salary for the term he legally remains in office without reference to any neglect in the discharge of the duties thereof.”

In Ruling Case Law, Vol. 22, page 529, the rule pertaining to the right of an officer to the emoluments provided for the office which he holds is stated as follows:

“The right of an officer to his fees, emoluments or salary is not impaired by his occasional or protracted absence from his post or even by his neglect of duty or failure to perform substantial services.”

and again, in Ruling Case Law, Vol. 22, page 525, it is said:

“It is a well established principle that the salary pertaining to an office is an incident of the office itself, and not to its occupation and exercise, nor does the compensation constitute any part of the office, yet the right to a public office carries with it the right to any emoluments which may pertain to it, and to the person legally holding the office belong the perquisites and emoluments attached by law to the office, as fully as does the office itself.”

In three late cases, decided in 1926, where a similar question was under consideration, the courts made observations pertaining to this question, as follows:

Elliott vs. Delinder (Cal.) 247 Pac. 523:

“Right to receive salary attached to office is incident to title and not to exercise of duties.”

Cunio vs. Franklin County, (Mo.) 285 S. W. 1006:

“The salary pertaining to an office is an incident to the office and not to its occupation and exercise, or to the individual discharging the duties of the office.”

King vs. Riverland, Levee District (Mo.) 279 S. W. 195:

“The compensation to public officers is a matter of statute, not contract, and is incident to the office.”

Upon the strength of the foregoing authorities, I am of the opinion that a county recorder is entitled to the salary provided for the office to which he has been duly elected and for which he has qualified, so long as he retains title to the office, even though he devotes his entire time to other lines of endeavor. The proceeds flowing from the other lines of endeavor to which a county recorder devotes his time and attention, rightfully belong to such officer personally, and he is not required to account for the same to the county in which he is the recorder.

In connection with the above opinion however, it is deemed proper to point out that when making appropriations for deputy and clerk hire in the recorder's office, the board of county commissioners would be justified in taking into consideration the facts set forth in your letter. Your attention is also invited to the fact that by the terms of Section 5625-32, General Code, as enacted in House Bill No. 80, passed by the 87th General Assembly an appropriation ordinance or measure may be amended or supplemented from time to time. This section of the code takes the place of Section 5649-3h, repealed in House Bill No. 80. With reference to former Section 5649-3h, General Code this department in Opinion No. 59 rendered under date of February 9, 1927, held as follows:

“1. County commissioners have full authority to fix the amount of the appropriation for deputy hire in the various county officers, and each county

officer in fixing the compensation to be paid to his deputies, assistants, clerks, bookkeepers and other employes is limited to the amount of the appropriation.

2. An appropriation measure governing money for deputy hire in county offices when once passed by county commissioners, may be amended by either increasing or reducing the amount appropriated for such purpose, and the county officer appointing such deputies, assistants, clerks, bookkeepers and other employes, cannot expend in any fiscal year a greater sum for the salary of such deputies and other assistants than is fixed in the appropriation measure as amended."

In addition, your attention is invited to the fact that mandamus will lie to compel an officer to perform specific acts especially enjoined by law to be performed. And your attention is further invited to Section 10-1 et seq., of the General Code, providing *inter alia* that a county officer, who refuses or willfully neglects to perform any official duty imposed by law or is guilty of gross neglect of duty or non-feasance, may be removed from office.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1224.

DIRECTOR OF HIGHWAYS—DUTY, IF NECESSARY, TO MAKE PLANS AND MAPS FOR HIGHWAY IMPROVEMENT—BRIDGE ON OHIO RIVER, INTER-COUNTY HIGHWAY NO. 7—VALIDITY OF BOND OF BRIDGE COMPANY.

SYLLABUS:

1. *By the terms of Section 1196, General Code, upon the approval by the Director of Highways and Public Works of an application for state aid, filed by a board of county commissioners, it is the duty of such Director, if necessary, to cause a map of the highway in outline and profile to be made, indicating thereon any change of existing lines if the Director deems it of advantage to make such change. It is further the duty of the Director to cause to be made plans, specifications, profiles, and estimates for such improvement, and as an incident thereto and to the making of the improvement, such Director is vested with the discretion to determine at what grade the highway shall be made.*

2. *Where a part of inter-county highway No. 7 along the Ohio River is being improved, whether or not a proposed bridge over the Ohio River will be built, is a vital factor to be taken into consideration in determining whether or not a change shall be made in the existing lines of such highway and in fixing the grade at which such highway is to be constructed.*

3. *An agreement entered into by the Director of Highways and Public Works with the County of Meigs, the Village of Pomeroy, and a private corporation, which proposes to construct a bridge over the Ohio River connecting inter-county highway No. 7 with a highway in West Virginia, in which agreement, in consideration of the determination by the Director to change the existing lines of the highway and fix the grade thereof so that suitable approaches to the proposed bridge can be built and of the State's proceeding without delay to construct said road improvement, the county commissioners agree to pay a*