

Applying this test, it would seem that there is no incompatibility in these two offices. In no way is the one subordinate to or a check upon the other, nor is either a full time position. Of course, it is a question of fact as to whether it is physically possible for one person to fully discharge the duties of both offices.

Therefore, in specific answer to your question, I am of the opinion that the offices of county recorder and township clerk are compatible and may be held by one and the same person, if it is physically possible for one person to perform the duties of both offices.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2898.

PURCHASE OF TRUCK—BY TOWNSHIP TRUSTEES ON DEFERRED PAYMENTS—TAX LEVY REQUIRED ON ALL INCORPORATED AND UNINCORPORATED TERRITORY IN TOWNSHIP TO REDEEM NOTES.

SYLLABUS:

When a truck is purchased according to the provisions of Section 7201, General Code, and notes are issued in payment thereof, a tax must be levied on all the taxable property located within an incorporated territory situate in the township for the payment of such notes and interest.

COLUMBUS, OHIO, February 2, 1931.

HON. JAMES M. AUNGST, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—Acknowledgment is hereby made of the recent communication from your assistant, Huber J. Snyder, which reads as follows:

“Section 7201, General Code of Ohio, authorizes township trustees to purchase trucks upon terms, to wit: not less than one-third of the purchase price in cash, and the remainder not more than one-third to be paid within one year from the date of purchase, and not more than one-third within two years from the date of purchase. The statute further provides that township trustees shall make provision for levying and collecting annually by taxation an amount sufficient to pay the interest and provide a sinking fund for the final redemption for such notes at maturity.

“Should a tax be levied on all the taxable property in the entire township to pay off these notes or should a tax be levied only on the unincorporated territory in that township? In most of our townships there are municipal corporations which take up a part of the territory, and yet this machinery bought by the trustees is used only in the territory outside of the municipal corporations—and hence the question arises.”

Section 7201, General Code, to which you refer, reads as follows:

“County commissioners and township trustees, in the purchase of machinery, tools, trucks and other equipment for use in constructing, maintaining and repairing roads, shall be authorized to purchase such machinery, tools, trucks and equipment upon the following terms, to wit: not less than one-third of the purchase price thereof shall be paid in cash, and of the re-

remainder not more than one-third may be paid at any time within one year from the date of purchase and not more than one-third at any time within two years from the date of purchase. Such commissioners or trustees shall be authorized to issue to the purchaser the notes of the county or township, as the case may be, signed by the commissioners or trustees and attested by the signature of the county auditor or township clerk, covering such deferred payments and payable at the times above provided, which notes may bear interest at not to exceed six per cent per annum. In the legislation under which said notes are authorized, the county commissioners or township trustees shall make provision for levying and collecting annually by taxation an amount sufficient to pay the interest, if any, thereof, and to provide a sinking fund for the final redemption of such notes at maturity. The provisions of Section 5660 of the General Code shall apply only to such portion of the purchase price of such machinery, tools, trucks or equipment as is to be paid in cash.

"The power herein conferred on township trustees shall be exercised by them only with the consent to and approval of such purchase and the terms thereof by the county commissioners of the county."

It is obvious that the authority in the foregoing section to issue notes and levy a tax to meet the interest and principal requirements thereon may not be construed as other than authority to incur indebtedness. The provisions of the foregoing section in this respect have been modified somewhat by the uniform bond act. I refer particularly to Section 2293-17, General Code, which provides as follows:

"The net indebtedness created or incurred by a township, exclusive of the bonds excepted in Section 2293-13 of the General Code, and exclusive of county bonds issued in anticipation of township tax levies shall never exceed two per cent of the total value of all property in such township as listed and assessed for taxation; and no such indebtedness with said exceptions shall be incurred unless authorized by vote of the electors."

Manifestly townships are no longer authorized to incur indebtedness except pursuant to vote of the electors as provided in the uniform bond act. It should be further borne in mind that it is contemplated by the uniform bond act that all voted indebtedness shall be paid off by a levy outside the fifteen mill limitation.

Sections 2293-17 to 2293-23, inclusive, of the General Code, deal with the subject in question.

Assuming, however, for the purpose of this opinion that the issuance of these notes provided for in Section 7201, supra, has been duly authorized by the electors of the township, it should be noted that that section specifically provides for interest due on the notes authorized for the purchase of a truck, and for the establishment of a sinking fund for such notes.

It would seem that the mere incorporation of a village does not in itself remove the territory of such municipal corporation from being a part of the township or townships within the limits of which it is situate.

In *State ex rel. Halsey, et al. v. Ward, et al.*, 17 O. S. 543, the first branch of the syllabus reads as follows:

"On the organization of a city of the second class divided into wards, the boundaries of which city are not co-terminous with those of any township, the territory within such city does not cease to be a part of the township or townships within the limits of which it is situate."

This is true except when the boundaries of the municipality become identical with those of a township. (Section 3512, General Code.)

That statutes exist which exempt the property in a municipality from a township tax is shown by an examination of Section 4179, General Code, which provides for the exemption of the property of a village which has established and maintains a cemetery, from a township tax for cemetery purposes.

It is to be noted that a specific exemption is made of the property located in a village situate in a township from a tax levy made by a township for the improvement, dragging, etc. of highways. Section 3298-18, General Code, provides in part as follows:

"After the annual estimate for each township has been filed with the trustees of the township by the county surveyor they may increase or reduce the amount of any of the items contained in said estimate and at their first meeting after said estimate is filed they shall make their levies for the purposes set forth in the estimate and for the purpose of creating a fund for dragging, maintenance and repair of roads, *upon all the taxable property of the township outside of any incorporated village or city*, or part thereof therein situated, not exceeding in the aggregate two mills in any one year upon each dollar of the valuation of such taxable property. * *"

(*Italics* the writer's.)

On the other hand there are statutes which provide for a tax upon all the township property, such as Sections 3404 and 6927 of the General Code. These sections read in part as follows:

3404. "* * * If a majority of the electors voting at such election vote in favor thereof, the trustees may, annually, levy upon all the taxable property of such township a tax not exceeding one mill on the dollar valuation thereof, to be applied to the establishment and maintenance of a library, and the procuring of suitable room or rooms therefor."

6927. "For the purpose of providing by taxation a fund for the payment of the proportion of the compensation, damages, costs and expenses of such improvement to be paid by the township or townships interested, in which such road may be in whole or in part situated, the county commissioners are hereby authorized to levy a tax not exceeding three mills in any one year upon all the taxable property of such township or townships. * * *"

I believe Section 7201, here under discussion, to be of the latter class.

In view of no exception being made in Section 7201, General Code, for property located in a municipality from a tax levied under the provisions of that section, it is my opinion that when a truck is purchased according to the provisions of said section, and notes are issued in payment thereof, a tax must be levied on all the taxable property located within an incorporated territory situate in the township for the payment of such notes and interest.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2899.

TEAR GAS PROTECTIVE EQUIPMENT—RIGHT OF COUNTY COMMISSIONERS TO PURCHASE SUCH EQUIPMENT FROM COUNTY FUNDS AND INSTALL IT IN COUNTY TREASURER'S OFFICE.