

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that when a schoolhouse has been destroyed by fire or other casualty and bonds are proposed to be issued for a new building, to take the place of the building so destroyed, under the provisions of Paragraph (c) of Section 2293-15, General Code, bonds so issued need not be considered in ascertaining the limitations of indebtedness of such school district to the extent of three per cent of the total value of all property in such school district as listed and assessed for taxation. Furthermore, under such state of facts, if bonds are to be issued for such purpose in excess of three per cent of the tax duplicate, the consent of the Tax Commission must be secured before submitting the question to the electors as provided in this section, if such excess causes the net indebtedness to aggregate more than four per cent of the tax duplicate. In no case may such excess over three per cent as hereinbefore set forth cause the net indebtedness to exceed six per cent of the tax duplicate.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

291.

TOWNSHIP TRUSTEE—ATTENDANCE AT MEETING OF ADVISORY BOARD OF HEALTH DISTRICT—RATE OF COMPENSATION—CONDITION—EXPENSES ALLOWED IN ADDITION.

SYLLABUS:

The chairman of the board of trustees of the township who attends the meeting of the advisory board of the general health district, pursuant to the provisions of Section 1261-18, General Code, is engaged in the business of the township, and may draw \$2.50 per day for said service, under Section 3294, General Code, provided that the compensation paid to such trustee during any one year shall not exceed \$250.00. Such chairman may, in addition to such compensation, receive his expenses, under authority of Section 1261-18 of the General Code.

COLUMBUS, OHIO, April 11, 1929.

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

GENTLEMEN:—Acknowledgment is made of your recent communication which reads:

“You are respectfully requested to furnish this department your written opinion upon the following:

Section 1261-18 of the General Code provides that the mayor of each municipality not constituting a health district and the chairman of the trustees of each township in a general health district shall constitute a board to select and appoint a district board of health. It further provides that on certification of a chairman and secretary the necessary expenses of each delegate to the annual or special meeting shall be paid by the village or township he represents. Section 3294 of the General Code provides that each trustee shall receive \$2.50 for each day of service in the business of the township to be paid from the township treasury but shall not exceed \$250.00 in any one year?”

Question 1. May the chairman of the board of trustees of a township,

who attends the meeting of the advisory board under Section 1261-18, General Code, receive the \$2.50 for the day on which he attends such meeting in addition to his expenses out of the township treasury and in addition to the maximum of \$250.00 per year provided for in Section 3294, General Code?

Question 2. May he receive this compensation and expenses out of the township treasury if his total compensation including the compensation for attending the meeting of the advisory board does not exceed \$250.00 per year?"

Section 1261-18 of the General Code, as stated in your communication, provides that the mayor of each municipality not constituting a health district and the chairman of the trustees of each township in a general health district shall constitute a board to elect and appoint a district board of health. It is further provided that said board shall meet at the county seat and organize by selecting a chairman and secretary. Without undertaking to set forth the section in full it is believed to be sufficient to state that after providing a number of things, in addition to those already mentioned which are not pertinent to the question herein, it contains the following:

"On the certification of the chairman and secretary the necessary expenses of each delegate to an annual or special meeting shall be paid by the village or township he represents."

The duty imposed upon the chairman of the board of township trustees under this section relates to health matters, and such duty devolves upon him by virtue of his being a chairman of the board of trustees.

Section 3294, to which you refer, provides in part:

"Each trustee shall be entitled to one dollar and fifty cents for each day of service in the discharge of his duties in relation to partition fences, to be paid in equal proportions by the parties, and two dollars and fifty cents for each day of service in the business of the township, to be paid from the township treasury. The compensation of any trustee to be paid from the treasury shall not exceed two hundred and fifty dollars in any year including services in connection with the poor. * * * "

An analysis of the section last quoted discloses that the compensation therein provided for, except for the duties in relation to partition fences, relates to his services in connection with "the business of the township."

It therefore remains to be determined whether, in attending the meeting of the board of the general health district, the chairman of the board of trustees is engaged in the business of the township within the meaning of Section 3294, supra.

Strictly speaking, each member of such board is engaged upon the business of the health district and not upon the business of the individual subdivision. On the other hand, the matter of the public health is one of vital importance to each of the subdivisions constituting the district. That each of the subdivisions is concerned herein is recognized by the designation of a representative of each subdivision to act upon the board of the district. Further recognition of the interest of the township in the work of the district is found in that portion of Section 1261-18, General Code, heretofore quoted, which requires the payment of the expenses of the president of the board of trustees incurred by reason of his attendance at the district board meeting, from the township treasury. It would scarcely be proper to require payment to be made in this manner if the deliberations of the board of the health district were not matters of township concern.

In view of what has been said, I am of the opinion that the services rendered by the chairman of the board of trustees of the township as a member of a general health board are in connection with the business of the township and accordingly for such services the president is entitled to \$2.50 for each day of such service, provided the maximum amount paid to him as a township trustee shall not exceed \$250.00 in any year.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

292.

MAYOR—VILLAGE—MAY CAST VOTE TO BREAK TIE WHEN RESOLUTION OR ORDINANCE OF COUNCIL EMPLOYS ATTORNEY—CANNOT VOTE WHEN ORDINANCE GENERAL OR PERMANENT.

SYLLABUS:

1. *When the council of a village casts a tie vote upon a resolution or ordinance involving the employment of an attorney and fixing his compensation under the provisions of Section 4220 of the General Code, the mayor of such village may cast the deciding vote. Opinion, Attorney General, No. 1911 for the year 1928, approved and followed.*

2. *Under the authority of the case of Wuebker vs. Hopkins, 29 O. App. 386, when council takes action of a general or permanent nature, the same should be done by ordinance, and a majority of council must concur therein, and in case of a tie the mayor cannot cast the deciding vote.*

COLUMBUS, OHIO, April 11, 1929.

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

GENTLEMEN:—Acknowledgment is made of your recent communication which reads:

“The syllabus of Opinion No. 1911, dated March 29th, 1928, reads:

“Therefore, unless there be some provision in the particular municipality upon the subject, I am of the opinion that by virtue of Section 4255, General Code, whenever the members of a village council are equally divided in their votes upon any measure, including action under Section 4220, General Code, the mayor of the village may cast the deciding vote.”

In the case of *Wuebker vs. Hopkins, et al.*, decided by the Court of Appeals for Cuyahoga County on June 25, 1928, and published in the State Bar Association Report of December 4th, 1928, Volume 1, page 386, it was decided that the mayor of a village did not have a vote in case of a tie vote by members of a village council on the passage of an ordinance.

In view of this decision, the Bureau will appreciate a reconsideration of the question of the right of a mayor of a village to cast the deciding vote in case of a tie vote by members of council.”

The opinion, No. 1911, dated March 29, 1928, to which you refer, held, as disclosed by the syllabus, that: