

In view of the above, I am returning herewith the articles of incorporation of The First Roosevelt Benefit Company, together with the copy of the constitution and by-laws without my approval.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1021.

CREATION OF NEW TOWNSHIP—APPOINTMENT OF NEW TOWNSHIP TRUSTEES, PENDING GENERAL ELECTION—COMPENSATION OF NEW TOWNSHIP TRUSTEES, WHEN—\$250.00 YEARLY LIMITATION.

SYLLABUS:

1. *When a new township is created pursuant to Sections 3250-1, et seq., General Code, and new township trustees are appointed to serve until the next general election as provided in Section 3250-4, General Code, the amount earned by others serving as township trustees for such territory prior to such formation of a new township shall not be taken into consideration in determining the \$250 yearly limitation of such new township trustees' compensation. Opinions of the Attorney General for 1931, Vol. 1, page 339, followed.*
2. *Where one of such trustees of the former board is appointed as a trustee of the new board, the \$250 yearly limitation of compensation applies, since such limitation is personal and not to the term.*
3. *Under such circumstances, trustees should be elected for the short term under Section 10, General Code.*

COLUMBUS, OHIO, August 18, 1937.

HON. ROBERT G. CARPENTER, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR: Your letter of recent date is as follows:

“Under the provisions of Ohio G. C. 3250-1, a petition was presented to our county commissioners, signed by a majority of the freehold electors of Loudon Township owning land outside of the city limits of Fostoria, Ohio, asking that a new township be created, excluding the territory within the city limits of Fostoria.

The old township has no existing indebtedness except current bills, and had made no levy for their general fund on the property within the said city, so that neither Ohio G. C. 3250-2 nor 3250-3 presented any particular problem when the Seneca County Commissioners granted the petition, and created a new township, retaining the name 'Loudon'.

Designating the elected trustees of the old township as X, Y and Z, and the clerk as C, the trustees X and Y live within the boundaries of the new township, as does the clerk, C. The trustee Z lives within the city limits of Fostoria, Ohio. Under Ohio G. C. 3250-4, the commissioners appointed the former clerk C as clerk of the new township; appointed the two old trustees, X and Y as trustees of the new township, and appointed N as the third trustee in place of Z, who does not reside within the limits of the new township. I might add that all of the territory is within the limits of the Fostoria Municipal Court, so that they have no justice of the peace or constable.

I have advised the clerk that new bonds will have to be given by the new officers, including those who were officers of the former township, and that a new depository contract should be entered into; that the old board should hold a final meeting; pay all bills, and make a final settlement, and turn all assets and papers over to the new board.

The foregoing is all by way of explanation, and may seem rather lengthy; I so recite that you may have a fairly complete picture of the background, and we come now to my specific questions:

(1) Z, the trustee of the former township, who is not a member of the new board, claims to have put in 100 days. Does this case coincide with the facts upon which 1931 O. A. G. 3014 is based, and is Z now entitled to the sum of \$250 under Ohio G. C. 3294?

(2) Assuming that N, the new trustee, puts in 100 days under his appointment, is he entitled to the sum of \$250?

(3) Assuming that X and Y have put in their full 100 days in the business of the old township, are they at the present time entitled to draw \$250? If so, and if they are engaged in this business of the new township for 100 days, during the period of their present appointment, are they entitled to the further sum of \$250?

(4) Under Ohio G. C. 3308, is C, the clerk of both old and new townships, entitled to \$250 for his services to the old

township, and to the same amount for services rendered to the new township, in case the respective boards so allow?

(5) Under Ohio G. C. 3250-4, it appears that the tenure of the newly appointed officers ends on November 2, 1937, election day. If so, will it be necessary to elect officers for the short term from election day until January 1st, 1938? If so, is the compensation to be paid these officers to be affected by any amounts drawn by their predecessors, the present appointees? Or by any amounts drawn by the elected officers of the old township?

It appears to the writer that the sections under consideration were enacted without sufficient deliberation or forethought, and I hesitate to advise the present officials further prior to the receipt of your opinion."

Section 3294, General Code, provides inter alia that "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." The opinion to which you refer in connection with your first question is reported in Opinions of the Attorney General for 1931, Vol. I, page 339. The syllabus is as follows:

"The amount earned by the predecessor of a person appointed to fill a vacancy in the office of township trustee shall not be taken into consideration in determining whether the \$250.00 yearly limitation of a township trustee's compensation to be paid from the township treasury has been exceeded."

In the body of the opinion at page 340, after quoting Section 3294, General Code, the then Attorney General said:

"The language of the statute provides that the compensation of *any* trustee paid from the township treasury shall not exceed \$250.00 in any year.

The word 'any' is defined in Webster's New International Dictionary as 'one indiscriminately out of a kind or number.' Words and Phrases, Vol. I, page 412, quotes Johnson as defining 'any' to mean 'every.' See also Vol. I, of Bouvier, page 205.

From these authorities it would appear that the words 'any trustee' may be construed to mean 'every trustee.'

In the instant case, upon the appointment and qualification of the person to the office of township trustee for the

unexpired term caused by the death of the prior trustee, the person so appointed and qualified became a township trustee; and, as such trustee, his compensation from the township treasury would be subject to the limitation of Section 3294, supra. To say that compensation paid to his predecessor in office amounts to payment to him would be contrary to reason.

If the words 'any trustee' are to be construed to limit the compensation of the office for one year, it would follow that not more than \$250.00 could be paid to holders of the office for such period. This conclusion is negated by an examination of the section cited. The language therein used clearly indicates a reference solely to a township trustee in person, and not to the term of office. To hold otherwise would also be to discriminate against a trustee because the term of office to which he was appointed included an unexpired portion of the fiscal year of the township."

It is my judgment that the foregoing opinion and reasoning upon which it is based is entirely responsive to your first and second questions and they are accordingly answered in the affirmative.

Considering your third and fourth questions, I am likewise of the opinion that the foregoing opinion of this office rendered in 1931 is completely dispositive thereof. The inhibition against a township clerk receiving more than \$250 from the township treasury in any one year is couched in the following language as contained in Section 3300, General Code:

"The clerk shall be entitled to the following fees, to be paid by the parties requiring the services; twenty-five cents for recording each mark or brand; ten cents for each hundred words of record required in the establishment of township roads, to be opened and repaired by the parties; ten cents for each hundred words of records or copies in matters relating to partition fences, but not less than twenty-five cents for any one copy, to be paid from the township treasury; ten cents for each hundred words of record required in the establishment of township roads, to be opened and kept in repair by the superintendents; for keeping the record of the proceedings of the trustees, stating and making copies of accounts and settlements, attending suits for and against the township, and for any other township business the trustees require him to perform, such reasonable compensation as they allow. In no one year shall he be entitled to receive

from the township treasury more than two hundred and fifty dollars.”

Sections 3308 and 3294, *supra*, as to limiting the amount of compensation which may be drawn by township clerks and township trustees, are analogous and must be similarly construed. See Opinions of the Attorney General for 1921, Vol. I, page 80, 88. It is my judgment that the limitation is personal to the individual and an application of the principle upon which the 1931 opinion, *supra*, was based impels the conclusion that neither township trustees nor a township clerk may be compensated from the township treasury in excess of \$250 per year, as provided in Sections 3294 and 3308, General Code, even though the territory which they serve may in the course of such year be included in a new township in accordance with Sections 3250-1, *et seq.*, General Code. As stated in the 1931 opinion, *supra*, in referring to Section 3294, General Code, “the language therein used clearly indicates a reference solely to a township trustee in person, and not to the term of office.” A trustee or clerk serving two terms in one year as such would necessarily be subject to the \$250 limitation provided by law, since these limitations do not relate to the term of office.

Coming to your fifth question, Section 3250-4, General Code, provides as follows:

“Upon entering such an order creating a new township, the county commissioners shall appoint all township officers to serve until the next township election.”

Reference is made to Section 10, General Code, which provides in part as follows:

“When an elective office becomes vacant, and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified. Unless otherwise provided by law, such successor shall be elected for the unexpired term at the first general election for the office which is vacant that occurs more than thirty days after the vacancy shall have occurred. * * *.”

While the foregoing section might be construed to apply to a successor in office rather than a vacancy created by a new office being established, it is my judgment that it is clearly applicable to the instant case in providing for an election for these township officers for the short term ending next January. Section 3268, General Code, as amended by House Bill No. 12 of the 92nd General Assembly, provides that at the ensuing November election two township trustees

shall be elected for a four year term and one township trustee for a two year term. As to the compensation payable to incumbents for such short terms, the opinion hereinabove expressed an answer to your first two questions is dispositive of this point.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1022.

CHIEF OF DIVISION OF WORKSHOPS AND FACTORIES—
DUTY TO EXAMINE PLAN, DRAWINGS, SPECIFICATIONS
AND DATA—COMPLIANCE WITH OHIO BUILDING
CODE AND RULINGS AND REGULATIONS OF
BOARD OF BUILDING STANDARDS—DISAPPROVAL,
WHEN.

SYLLABUS:

1. *When plans, drawings, specifications and data are submitted to the Chief of the Division of Workshops and Factories under Section 12600-296, General Code, it is the duty of that official to examine said plans, drawings, specifications and data to ascertain whether they comply with the provisions of the Ohio Building Code and the rulings and regulations of the Board of Building standards.*

2. *If in the opinion of the Chief of the Division of Workshops and Factories, plans submitted to him under authority of Section 12600-296, General Code, do not come within the provisions of the Ohio Building Code and the rulings and regulations of the Board of Building Standards, he may refuse to approve said plans.*

COLUMBUS, OHIO, August 18, 1937.

HON. O. B. CHAPMAN, *Director, Department of Industrial Relations,
Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion as follows:

“Recently plans and specifications for a new theatre were submitted to the Division of Factory and Building Inspection, this department, for examination and approval, pursuant