

be conceded that his duties generally are the same as before. The present clerk has no definite term, but holds his office during the will apparently of the appointing authority. The act amending Section 1579-535, to which you refer, expressly repeals the former section, and when the act became effective there was no Clerk of the Municipal Court of the city of Akron until action had been taken under the new law. The original office was terminated by operation of law, and it is believed that the resignation to which you refer would have no effect upon the situation. Of course, the clerk could resign before the termination of the office, but if the resignation took place after the termination, it could not alter the conditions which were automatically created by operation of law.

Based upon the foregoing and in specific answer to your inquiry, it is my opinion that when Section 1579-535, General Code, as amended by the 88th General Assembly, 113 Ohio Laws, 657, became effective, the office of Clerk of the Municipal Court of Akron, provided for by the original section, became abolished, and that there is no legal objection to the clerk who held such original office from being appointed as Clerk of said Municipal Court under the new act.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1303.

TRANSFER OF FUNDS—ACCUMULATED EXCESS UNDER \$5,000 IN
COUNTY DOG AND KENNEL FUND NOT TRANSFERABLE TO GEN-
ERAL FUND.

SYLLABUS:

Transfers from the dog and kennel fund of a county to the general fund in accordance with the provisions of Section 5625-13, Subdivision "D", General Code, as enacted by the 88th General Assembly, are not authorized.

COLUMBUS, OHIO, December 17, 1929.

HON. BENJAMIN F. PRIMMER, *Prosecuting Attorney, Hamilton, Ohio.*

DEAR SIR:—I am in receipt of a letter signed by your assistant, H. H. Haines, which reads as follows:

"The County Commissioners of Butler County, Ohio, have asked for the opinion from the Prosecuting Attorney of said County whether the said Commissioners can transfer monies from the Dog and Kennel Fund, being a special fund, to the General Fund.

There is money in the Dog and Kennel Fund that is in said fund under the provisions of Section 5653, as amended in Ohio Laws, Volume 112, at page 352, but said amount is not in excess of \$5,000.00; that all the obligations incurred and payable from such special fund have been discharged and further that no obligation against said fund for the year 1929 can be created, and that no activity or service can in any manner create any obligations against said fund for the year 1929.

It is the opinion of the undersigned Assistant Prosecuting Attorney, that if all demands against said special fund have been satisfied for the year

1929, that such transfer can be made to the General Fund, under the provisions of Section 5625-13, Subdivision 'D' of the General Code, which is as follows:

'Unless otherwise provided by law, the unexpended balance in any special fund, other than an improvement fund, existing in accordance with Section 5625-9, paragraph (d), (f), or (g) or Section 5625-11, of the General Code, may be transferred to the general fund or the sinking fund or bond retirement fund, after the termination of the activity, service or other undertaking for which such special fund existed, but only after the payment of all obligations incurred and payable from such special fund.'

The County Commissioners are in desperate need to have funds transferred to the General Fund and to be used before the end of the year for the benefit of the public and the county, and as this money in the Dog and Kennel Fund is lying there uselessly and can be used for no public purpose whatever, during the year 1929, it would seem that by the provisions of Section 5625-13, Subdivision 'D', part of this fund could be transferred to the General Fund.

If we understand the provisions of the law governing the Dog and Kennel Fund, said fund for the coming year 1930 will be built up from the registration fees and penalties that are collected from the owners of dogs.

Before any action is taken looking to the transfer of said fund the undersigned, and the County Commissioners would like to have the opinion of your office in this matter, and they most respectfully and deferentially ask that your opinion be received at the earliest possible moment, as the Commissioners are now confronted by a critical situation."

It will be noted from the provisions of that portion of Section 5625-13, General Code, quoted in the letter above, that those provisions of law with reference to the transfer of unexpended balances of certain special funds to the general fund of the political subdivision apply only when no other provision of law is made which is applicable thereto. You will note that the portion of the statute quoted starts out:—"Unless otherwise provided by law,"

It seems to me that provision is clearly made "otherwise" for the transfer of accumulated balances in the dog and kennel fund. The statute with reference thereto is Section 5653, General Code. It reads as follows:

"After paying all the necessary expenses of administering the sections of the General Code relating to the registration, licensing, seizing, impounding and destroying of dogs and making compensation for injuries to live stock inflicted by dogs, also after paying all horse, sheep, cattle, swine, mule, and goat claims, at the December session of the county commissioners, if there remains more than one thousand dollars of the dog and kennel fund arising from the registration of dogs and dog kennels for such year in a county in which there is a society for the prevention of cruelty to children and animals, incorporated and organized by law, and having one or more agents appointed in pursuance to law, or any other society organized as provided in Sections 10062 to 10067, inclusive, of the General Code, that owns or controls a suitable dog kennel or a place for the keeping or destroying of dogs which has one or more agents appointed and employed in pursuance to law, all such excess as the county commissioners deem necessary for the uses and purposes of such society by order of the county commissioners and upon the warrant of the county auditor shall be paid to the treasurer of such society.

Provided that in a county in which there is such society organized by law, after the county commissioners have paid such society such excess as they

deem necessary; or in any county in which there is no such society organized as provided by law, if there should remain in such fund a sum in excess of five thousand dollars, after all legitimate expenses chargeable to such fund have been paid, any sum in excess of such five thousand dollars shall be transferred to the county general fund."

As I read the above statute it clearly appears to have been the intent of the Legislature that after the county commissioners had paid all necessary expenses of the administration of the sections of the General Code relating to the registration, licensing, impounding and destroying of dogs, and had made compensation for injuries to live stock inflicted by dogs, and further had paid to the humane society such amount from the dog and kennel fund as the commissioners deemed necessary for the uses and purposes of such society, the fund should accumulate until an excess of \$5,000.00 was accumulated above all legitimate expenses chargeable to the fund before the money should be transferred to the county general fund; and for that reason, transfers from this fund in the manner provided by Section 5625-13, Subdivision "D", General Code, as amended by the 88th General Assembly, are not authorized.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1304.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN FULTON COUNTY, OHIO.

COLUMBUS, OHIO, December 17, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

1305.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN SENECA COUNTY.

COLUMBUS, OHIO, December 17, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*