

does not exceed the limitation of \$250.00 set forth in Section 3294, General Code.”

As hereinabove stated, in neither of the foregoing opinions of my predecessor was any reference made to the opinion rendered in 1912 to the effect that the per diem authorized by Section 3294, General Code, must be paid from the general fund. It is my judgment, however, that the construction placed upon the term “township treasury” in the 1912 opinion is too narrow and unwarranted and that the opinions of my immediate predecessor are correct. The 1912 opinion, *supra*, is accordingly overruled in so far as it held that the per diem authorized by Section 3294, General Code, to be paid to township trustees as therein set forth is payable solely from the general fund.

It is my opinion, in specific answer to your inquiry, that township trustees may receive compensation at the rate of \$2.50 per day for their services in connection with the improvement of roads with funds arising from the provisions of Section 5541-8, General Code, so long as such compensation does not exceed the limitation of \$250.00 set forth in Section 3294, General Code.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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5126.

TOWNSHIP TRUSTEES—UNDER SECTION 3294, G. C., ENTITLED TO COMPENSATION FOR ATTENDANCE AT ANNUAL MEETING OF STATE ASSOCIATION, WHEN.

**SYLLABUS:**

*In the absence of an apparent abuse of discretion or the evidence of bad faith in a particular case, it cannot be said as a matter of law that it is unlawful for township trustees after determining the need and propriety of attending the annual meeting of the State Association of Township Trustees and Clerks held in Columbus, for the purpose of discussing matters pertaining to the duties of township trustees in carrying out their powers with respect to the performing of their official duties as trustees, to credit themselves with the time expended in attending such a meeting as being “service in the business of the township” for which they are entitled to per diem compensation in accordance with Section 3294, General Code.*

COLUMBUS, OHIO, January 30, 1936.

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

GENTLEMEN: This will acknowledge receipt of your request for my opinion, which reads as follows:

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

May township trustees receive \$2.50 per day, as provided in Section 3294, General Code, for attending the annual meetings of the State Association of Township Trustees and Clerks, held in Columbus?

In this connection, we call attention to your opinion No. 1532 of 1930, relative to compensation for township trustees attending meetings held within the county."

Section 3294, General Code, reads as follows:

"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. Each trustee shall present an itemized statement of his account for such per diem and services, which shall be filed with the clerk of the township, and by him preserved for inspection by any persons interested."

In the 1930 opinion to which you refer, which opinion will be found in the published Opinions of the Attorney General for 1930, Vol. I, page 274, it is held:

"In the absence of an apparent abuse of discretion or evidence of bad faith in a particular case, it cannot be said as a matter of law, that it is unlawful for township trustees, after determining the need and propriety of a conference with the trustees of other townships for the purpose of discussing matters pertaining to the duties of township trustees in carrying out their powers with respect to highways, cemeteries and poor relief, to credit themselves with the time expended in attending such a meeting as being 'service in the business of the township' for which they are entitled to per diem compensation, in accordance with Section 3294, General Code."

The doctrine of the said opinion, as stated in the syllabus quoted above, is directly applicable to the question submitted by you and in my opinion is dispositive of the question.

While the inquiry upon which the 1930 opinion was predicated had to do directly with the question of whether or not township trustees were entitled to the per diem compensation provided for by Section 3294, General Code, when meeting with other township boards of trustees within the county for the purpose of considering methods and procedure in the constructing, widening, reconstructing or otherwise improving roads or the establishing and carrying on a uniform system of caring for township cemeteries throughout the county, the conclusion reached in that opinion and the reasoning upon which that conclusion was based is applicable as well to joint meetings of boards of township trustees held without the county as to such meetings held within the county.

The then Attorney General, in his opinion, after referring to the statute in question, and particularly to that portion of the statute which provides that township trustees shall receive \$2.50 per day "for each day of service in the business of the township," stated that there had been no judicial pronouncement of just what constitutes "business of the township" in the prosecution of which township trustees should be paid. It was further pointed out that there was no express duty enjoined by statute for township trustees to cooperate with the trustees of other townships in the establishment or maintenance of highways or cemeteries, except joint cemeteries, or for the extension of poor relief. It is stated, however, that it is conceivable that under certain circumstances the interests of the township might be furthered by such cooperation. The persons who are in the best position to judge of the necessity for said cooperation are no doubt the trustees themselves, who are charged with the performance of the duties. If these trustees, in the exercise of a sound discretion and in good faith, determine that the interests of the township demand the cooperation of the trustees with the trustees of another or other townships and a meeting is called in furtherance thereof, it cannot be said as a matter of law, that the trustees when attending such a meeting were not extending "service in the business of the township" for which service they would be entitled to \$2.50 per day and not to exceed \$250.00 in any one year.

It is further stated in the course of this opinion:

"It should at all times be remembered that the presumption is in favor of the proper exercise of power on the part of public officials and while it is conceivable that, if it is held that township trustees of the several townships of a county or of several adjoining or neighboring townships have power to hold joint meetings for the purpose of discussing matters pertaining

to the duties of said township trustees in reference to highways, cemeteries and poor relief, the said power may be abused and carried beyond reasonable demands, it seems to me that it cannot be laid down, as a general proposition, in the absence of any evidence, that the discretion of the trustees was abused or that their action was not taken in good faith in any particular case.

Township trustees are elective officers. Their action with respect to the number of days they claim to have been doing the business of the township is an open book, inasmuch as they are required to present an itemized statement of their account for such per diem and services and that statement is filed with the clerk of the township and by him preserved for inspection by any persons interested. Should this power be abused, the people of the district can, and no doubt would remedy the matter before it had gone very far, by changing the board. Anyway, the Legislature has safeguarded any extensive abuse that might occur in this respect by limiting the amount that may be received by township trustees for per diem services to \$250.00 per year.

In specific answer to your question, I am unable to say, as a matter of law, that when township boards of trustees of several townships meet at some central point for the purpose of discussing matters pertaining to the duties of the several boards with respect to highways, cemeteries and poor relief, such trustees are not 'on the business of the township,' and are not entitled to the per diem compensation fixed by statute for township trustees when performing services in the business of the township."

It has been the practice for a long time, for public officials, particularly county officials, to form state organizations, and hold meetings at least once a year. Such organizations as the County Auditors' Association, the Probate Judges' Association, the State Association of Prosecuting Attorneys, and others, have been maintained for years. Meetings are held by these associations for the discussion of problems which these officials constantly meet in the performance of the duties of their respective offices. No doubt, much good in the public interest comes from such associations and their annual or periodical meetings. County officials draw annual salaries and their right to these salaries without deduction, although they are absent from their offices when in attendance at these meetings, has never been questioned so far as I know. In fact, it has been the general impression that the exchange of ideas and the comparison of methods and the discussion of public problems at meetings of this kind have resulted in considerable public benefit. There is no express legal basis for such organizations or for the payment of salaries or com-

pensation to public officials for attending meetings of such organizations but, as is pointed out in the opinion referred to above, it cannot be said as a matter of law that when public officials, in the exercise of a sound discretion and in the absence of an abuse of that discretion determine it to be in the public interest to meet in organizations with other officials for the discussion of problems attendant upon, and the discussion of methods pertaining to the duties of their respective offices, they should not be paid the legal compensation fixed by law for the performance of their public duties; and it cannot be said as a matter of law, in my opinion, that they are not performing "service in the business of" the subdivision which they represent, if in their discretion they determine that the public interest is served by such action. Of course, the discretion of officials in this respect, as well as any other, may be abused and carried beyond reasonable demands, but it cannot be said in my opinion, that the holding of a meeting once a year, and attendance at that meeting by township trustees for the purposes mentioned amounts to an abuse of discretion.

I am therefore of the opinion in specific answer to your question that in the absence of an apparent abuse of discretion or the evidence of bad faith in a particular case it cannot be said as a matter of law that it is unlawful for township trustees after determining the need and propriety of attending the annual meeting of the State Association of Township Trustees and Clerks held in Columbus, for the purpose of discussing matters pertaining to the duties of township trustees in carrying out their powers with respect to the performing of their official duties as trustees, to credit themselves with the time expended in attending such a meeting as being "service in the business of the township" for which they are entitled to per diem compensation in accordance with Section 3294, General Code.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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5127.

APPROVAL—BONDS OF CLEVELAND HEIGHTS CITY  
SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO,  
\$50,000.00.

COLUMBUS, OHIO, January 31, 1936.

*Retirement Board, State Teachers' Retirement System, Columbus, Ohio.*