

3995.

APPROVAL, NOTES OF SALEM CITY SCHOOL DISTRICT, COLUMBIANA COUNTY, OHIO—\$15,000.00.

COLUMBUS, OHIO, January 25, 1932.

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

3996.

APPROVAL, BONDS OF PARMA CITY SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO—\$55,700.00.

COLUMBUS, OHIO, January 25, 1932.

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

3997.

CANDIDATE—SHERIFF—CONSTITUTIONAL PROVISION, NO ONE SHALL HOLD SUCH OFFICE MORE THAN FOUR YEARS IN A SIX YEAR PERIOD, INAPPLICABLE—OPINION NO. 3602 RECONSIDERED AND REVERSED.

SYLLABUS:

Opinion No. 3602, under date of September 25, 1931, discussed and reversed.

COLUMBUS, OHIO, January 26, 1932.

HON. ORVILLE WEAR, *Prosecuting Attorney, Springfield, Ohio.*

DEAR SIR:—This is to acknowledge your recent request for my reconsideration of Opinion No. 3602 rendered September 25, 1931, which involved the following circumstances as set forth by you in your original communication:

“In this County we have a man, who was a former Sheriff, and who went out of office on January 5th, 1931.

He was originally appointed to the office of Sheriff by the Clark County Commissioners, on December 12th, 1927, and served through until 1929, and was then reelected for another term, finishing said term as above stated on January 5th, 1931.

He is desirous of running again in 1932 and if elected would assume office in January of 1933. In view of Section 3 of Article 10 of the Constitution, I am desirous of knowing whether or not he would qualify to run and, if elected, to hold office.”

Article X, section 3, Ohio Constitution, reads as follows:

“No person shall be eligible to the office of sheriff, or county treasurer, for more than four years, in any period of six years.”

Article X, section 2, Ohio Constitution, as amended October 13, 1885, reads:

"County officers shall be elected on the first Tuesday after the first Monday in November, by the electors of each county in such manner, and for such term, not exceeding three years, as may be provided by law."

However, Article XVII, section 2, relative to the terms of county officers, adopted November 7, 1905, later in point of time than Article X, section 2, and therefore controlling, reads in part as follows:

"and the term of office of all elective county, township, municipal and school officers shall be such even number of years not exceeding four (4) years as may be so prescribed."

Section 2823, General Code, which is relative to your communication, reads as follows:

"There shall be elected biennially in each county a sheriff and a coroner, each of whom shall hold his office for a term of two years beginning on the first Monday of January next after his election."

As determined in the former opinion, if the candidate for sheriff were to be elected at the coming election and serve his term, he would have served within a six year period eleven months and nine days and three years and twenty-three days, making a total of four years and two days.

It should be noted that the candidate in question, pursuant to section 2823, served as sheriff until January 5, 1931, the same being the first Monday in January.

Article XVII, section 2, above quoted, specifically states that the terms of county officials be "such even number of years" as may be prescribed by law. It is apparent that by force of section 2823, General Code, the term of a sheriff, all things remaining the same, will never be exactly an even number of years, since the time elapsing between the first Monday in January when a sheriff's term commences and the first Monday in January when the same terminates will necessarily be a day or two more or less than an even number of years. This same observation is applicable to the terms of common pleas judges, section 1532, General Code; probate judges, section 11643, General Code, section 10495, General Code; county commissioners, section 2395, General Code; county auditors, section 2558, General Code; etc.

In the instant situation, if in serving his first elective term, the sheriff had finished his term on January 1, 1931, there would be no doubt but that he would be an eligible candidate for the coming election in view of the fact that he would have had four days less service to be used in computing the total length of time which he would have served within the six year period.

It may also be argued that the reason in the adoption by the people of article X, section 3, was that a sheriff should not serve more than two consecutive terms in any term, this on the principle that the continuous holding of such an important governmental position as county sheriff by the same person might lead to abuses of power by such officials. In the instant situation this condition does not exist because of the fact that the term intervening from January 5, 1931, to January 2, 1933, prevents the danger against which article X, section 3, General Code, was intended to fend.

While, to determine that the person in question is eligible to be a candidate for the office of sheriff might perhaps be a technical violation of article X,

section 3, Ohio Constitution, if strictly construed, nevertheless, in view of the long established method of determining the commencement of elective terms of office of like nature, to which method the present difficulty is directly attributable, and bearing in mind that a strict construction of the above constitutional provision would render all the terms of the elective officers mentioned in said article and section and regulated in like manner unconstitutional, I believe that the courts would declare that the person involved in your inquiry eligible to become a candidate for the office to which he aspires.

In view of the foregoing, I feel that the conclusion reached in my prior opinion No. 3602, rendered September 25, 1931, is erroneous and should be reversed and accordingly I am of the opinion that the person in question is eligible to become a candidate for the position of county sheriff and, if elected, may qualify for said position.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3998.

APPROVAL, BONDS OF CITY OF AKRON, SUMMIT COUNTY, OHIO

COLUMBUS, OHIO, January 27, 1932.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

3999.

APPROVAL, LEASE TO LAND AT BUCKEYE LAKE—EUGENE
MUELLER.

COLUMBUS, OHIO, January 27, 1932.

HON. I. S. GUTHERY, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a recent communication over the signature of the Chief of the Bureau of Inland Lakes and Parks in the Division of Conservation, submitting for my examination and approval two certain leases in triplicate, by which there is leased and demised to one Eugene Mueller of Columbus, Ohio, as the lessee named in said respective leases, two several parcels of state reservoir lands at Buckeye Lake, which parcels of land are more fully described in the leases above referred to.

Each of the leases here in question is for a term of fifteen years and each calls for an annual rental of six per cent of the appraised valuation of the parcel of land leased; which valuation in each case is the sum of \$833.34.

Upon examination of said leases, I find that the same have been properly executed by the Conservation Commissioner, on behalf of the State of Ohio, and by the above named lessee.