

863.

APPROVAL, BONDS OF JEFFERSON TOWNSHIP RURAL SCHOOL DISTRICT, CLINTON COUNTY, \$991.43, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, November 7, 1923.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

864.

APPROVAL, BONDS OF MILAN RURAL DISTRICT, ERIE COUNTY, \$8,028.01, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, November 7, 1923.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio*

865.

DEPUTY REGISTRAR APPOINTED UNDER SECTION 6291-1 G. C. IS AN APPOINTIVE STATE OFFICER—WOULD COME WITHIN PROVISIONS OF SECTION 6 G. C.

*SYLLABUS:*

*A deputy registrar appointed under the provisions of section 6291-1 General Code of Ohio, is an appointive state office who would come within the provisions of section 6 of the General Code of Ohio.*

COLUMBUS, OHIO, November 8, 1923.

HON. THAD H. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your recent communication as follows:

“Section 6291-1, as amended by the 85th General Assembly, provides in effect that the Secretary of State shall appoint deputy registrars to have

charge of the issuing of automobile licenses in the various counties of the state and each deputy registrar shall be required to give bond, the form and amount of which shall be prescribed by the Secretary of State.'

The second sentence of section 6 of the General Code, as amended, provides: 'In all cases where an elective or appointive state officer is required by law to furnish a bond, a surety company bond may be given and the annual premium in such case shall be paid from the funds appropriated by the General Assembly to the various departments, boards and commission for such purpose.'

Information is desired by me as to whether or not a deputy registrar appointed under the provisions of section 6291-1 is an appointive officer who would come within the provisions of section 6, above quoted."

Section 6 of the General Code of Ohio, found in 110 O. L., p. 128, as far as pertinent, provides:

" \* \* \* In all cases where an elective or appointive state officer is required by law to furnish bond, a surety company bond may be given and the annual premium in such cases shall be paid from the funds appropriated by the General Assembly to the various departments, boards and commissions for such purpose."

Section 6291-1, General Code of Ohio, found in 110 O. L., 244, provides:

"The secretary of state shall designate one or more persons in each county to act as deputy registrars, who shall accept applications for the annual license tax, and assign distinctive numbers in the same manner as the secretary of state. Such registrars shall be located at the county seat and at such other cities or villages in the county as the secretary of state sees fit, and shall serve without compensation.

The secretary of state shall assign to each deputy registrar a series of numbers sufficient to supply the demand at all times in such community, and shall keep a record in his office of the numbers within the series so assigned. Each deputy registrar shall be required to give bond, the form and amount of which shall be prescribed by the secretary of state.

The deputy registrars shall keep a file of each application and register such motor vehicles with the name and address of the owner thereof. The secretary of state shall keep a similar file of all persons who have applied directly to him."

Section 6294 General Code, found in 110 O. L., p. 245, as far as pertinent, provides:

"Every owner of a motor vehicle which shall be operated or driven upon the public roads or highways of this state shall before the first day of January of each year, except as herein otherwise expressly provided, cause to be filed, by mail or otherwise, in the office of the secretary of state or of a deputy registrar a written application for registration for the following year, beginning the first day of January of such year, on blanks to be furnished by the secretary of state for that purpose, containing the following information:

The deputy registrar of such automobile shall immediately forward to the secretary of state the application, together with the fee collected from the owner of such motor vehicle. Each deputy registrar shall retain in his office a copy of said application until the first day of April of the following year after the date of such application. This copy shall be for public reference. The secretary of state shall forward a copy of this application to the county auditor of the county in which the district named in the application is located.

A copy of every application for registration filed at the office of the secretary of state shall be mailed by him to the county auditor of the county in which the district of registration named in the application is located."

Section 6298 General Code, found in 110 O. L., p. 246, provides:

"Upon the filing of such application and the payment of the tax imposed by this chapter, the secretary of state or deputy registrar shall assign to such motor vehicle a distinctive number, and, issue and deliver to the owner in such manner as the secretary of state or deputy registrar may select a certificate of registration, in such form as the secretary of state shall prescribe, and two number plates, duplicates of each other, in person or at the post or express office within the state of Ohio named in said application."

Section 6299, as found in 110 O. L., p. 246, provides:

"The secretary of state shall keep on file in his office a complete index of all licenses issued, by license numbers, and alphabetically by names of owners, and a full and correct list of the names and addresses of the deputy registrars, together with the numbers within the series that have been assigned to each. Such list shall also show such numbers as have been sold directly by the secretary of state. The secretary of state shall also be required to mail monthly, to each deputy registrar and to the chief of police in each municipality in Ohio a copy of the list above described."

It will be noticed that the various sections designate the person who accepts the annual license fee and assigns numbers as a "deputy registrar".

The laws of Ohio do not specifically provide for a registrar, but do provide for a deputy registrar. The duties enjoined upon a deputy registrar are similar to those enjoined on the secretary of state, but are not identical.

In *State ex rel v. Jennings*, 57 O. S., p. 415, on page 424, the court says:

"Many efforts have been made to define a public office; and it is only the incumbent of such office whose rights can be challenged in a proceeding in *quo warranto*. But it is easier to conceive the general requirements of such office, than to express them with precision in a definition that shall be entirely faultless. It will be found, however, by consulting the cases and the authorities, that the most general distinction of a public office is, that it embraces the performance by the incumbent of a public function delegated to him as a part of the sovereignty of the state. Thus in *Meachem's Offices and Officers*, section 4, it is said: 'The most important

characteristic which distinguishes an office from an employment or contract, is that the creation and conferring of an office involves a delegation to the individual of some of the sovereign functions of government, to be exercised by him for the benefit of the public; that some portion of the sovereignty of the county, other legislative, executive, or judicial, attaches, for the time being, to be exercised for the public benefit. Unless the powers conferred are of this nature, the individual is not a public officer.'

So in High on Extraordinary Legal Remedies, section 625, it is said: 'An office, such as to properly come within the legitimate scope of an information in the nature of a *quo warranto*, may be defined as a public position, to which a portion of the sovereignty of the country, either legislative, executive or judicial, attaches for the time being, and which is exercised for the benefit of the public.'

In the case of State ex rel. Binyon v. Houck et al., 11 Cir. Ct. (n. s.) 414, it was said by the court:

"The fact that the statute uses the word 'deputy' is not necessarily controlling \* \* \*."

In the case of State ex rel Bickett v. Knight, 169 N. Car., 333, it was held:

"The name given to the position by the General Assembly is evidence of the character of the position, as a public officer or otherwise, but it is not determinative or conclusive."

From the above decisions and the fact that the statutes do not provide in so many words for a state registrar, it is necessary to look to the character of the duties attached to the office to determine whether such person is a state officer or a deputy.

In State ex rei v. Jennings, supra, on page 424 it is said by the court:

"But the character of an office cannot be attached to a position by a name merely. Whether it be an office or not, will depend upon the nature and character of the duties attached to it by law."

In State ex rel v. Brennan, 49 O. S., 33, on page 38 the court says:

"It is not important to define with exactness all the characteristics of a public office, but it is safely within bounds to say that where, by virtue of law, a person is clothed, not as an incidental or transient authority, but for such time as denotes duration and continuance, with independent power to control the property of the public, or with public functions to be exercised in the supposed interest of the people, the service to be compensated by a stated yearly salary, and the occupant having a designation or title, the position so created is a public office. And where such duties are wholly performed within the limits of a county, and for the people of that county, the salary to be paid by the disbursing officer of the county, from the funds of the county, the office is a county office, and, as one who is lawfully invested with an office is an officer, the person lawfully filling such place is necessarily a county officer."

Again, at page 39, the court said:

"From these definitions and illustrations it is clear that the position created by the act in question is an office, and that the defendant, if selected in the manner prescribed by law, is an officer. Upon him is imposed the right to exercise an employment in the purchase and control of property of the public, not as a temporary, casual act, but as a continuous duty. He is to exercise public functions in the supposed interest of the people. These he exercises independently, for others, and without their leave. He is given by the act itself the title or designation of 'stationery storekeeper,' and it is not without significance that he is also denominated an 'officer'. He is to give bond for the faithful performance of his duties, and is entitled to the yearly salary affixed by the act. The office is an independent one. Its duties are not devolved upon the occupant by a superior, as ministerial duties may be devolved upon a deputy, but are imposed by the statute. True, the statute does not provide for an oath of office. But this is not important, for, if by other tests, he is an officer, then the constitution, section 7, of article 15, prescribes the oath, and its injunctions surely cannot be less obligatory than if directed by statute."

The statutes provide the following duties for deputy registrars: They shall accept applications for the annual license tax and assign distinctive numbers; they shall keep and file each application and register such motor vehicles with the name and address of the owner; they shall forward applications, with fee, to the secretary of state; they shall retain a copy of all applications until the first day of April of the following year; they shall issue certificates of registration; they shall receive a list from the secretary of state of all licenses issued in the state. He must give bond for the faithful performance of his duties and act without compensation.

The deputy registrar of automobiles is officially authorized to accept applications and to issue license tags and certificates of registration to any resident of the state, whether a resident of the county or not. He acts in an independent capacity, with authority to do and perform official acts. He is clothed with some of the sovereign powers of the state to be exercised in the interest of the public, as required by law.

The above facts bring deputy registrars of automobiles clearly within the doctrine laid down in the case of *State ex rel v. Brennan*, supra.

If the office of a deputy registrar is a public office, it only remains to be determined whether such office is a state office.

The deputy registrar is appointed by the secretary of state and hold office during his pleasure. The applications received and all funds are forwarded to the secretary of state. His jurisdiction is coextensive with the state and his duties relate to the handling of state property and state funds. His bond is made payable to the state.

The fact that the statute reserves to the legislative branch of the government the matter of biennial appropriation to provide for the payment of premium on surety bonds, is not believed to reflect on the question submitted, but goes solely to the point of availability of funds.

In view of the above facts, it is clearly evident that such officer is not a county or township officer but is a state officer and subject to the statute regarding state officers.

It is therefore my opinion that a deputy registrar, appointed under the provisions of section 6291-1, is an appointive state officer who would come within the provisions of section 6, General Code of Ohio.

Respectfully,  
C. C. CRABBE,  
*Attorney-General.*

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866.

APPROVAL, BONDS OF CITY OF WELLSTON, JACKSON COUNTY, \$29,017.08, IN ANTICIPATION OF THE COLLECTION OF SPECIAL ASSESSMENTS.

COLUMBUS, OHIO, November 8, 1923.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

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867.

APPROVAL, BONDS OF GIRARD CITY SCHOOL DISTRICT, TRUMBULL COUNTY, \$75,000.00, TO PURCHASE SITE, ERECT AND EQUIP SCHOOL BUILDINGS.

COLUMBUS, OHIO, November 8, 1923.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

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868.

APPROVAL, BONDS OF GIRARD CITY SCHOOL DISTRICT, TRUMBULL COUNTY, \$75,000.00, TO PURCHASE SITE, ERECT AND EQUIP SCHOOL BUILDINGS.

COLUMBUS, OHIO, November 8, 1923.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*