

so far as his services are such as he is legally required to perform for such board, there is no compensation provided other than the salary which he receives, which is provided by the city:

In view of the foregoing, you are advised that a city board of education may not legally pay the city solicitor for services rendered to its board when the services are such as the city solicitor in his official capacity is required to perform.

It would logically follow that what has been said herein relative to a city solicitor would be equally applicable to an assistant city solicitor.

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

3904.

JUDGE OF MUNICIPAL COURT OF SPRINGFIELD MAY FILL VACANCY
IN BOARD OF TOWNSHIP TRUSTEES—SECTIONS 1579-715 AND 3262
OF THE GENERAL CODE CONSTRUED.

SYLLABUS:

Under the provisions of Section 1579-715 of the General Code of Ohio, the Judge of the municipal court of the city of Springfield may fill a vacancy in the board of township trustees of Springfield township, thereby exercising the powers heretofore granted to justices of the peace of said township under the provisions of Section 3262.

COLUMBUS, OHIO, December 22, 1926.

HON. OTHO L. MCKINNEY, *Prosecuting Attorney, Springfield, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication requesting my opinion upon the following state of facts:

“A vacancy will exist in the board of township trustees of Springfield township, this county. Section 3262, G. C. provides that such a vacancy shall be filled by the oldest justice of the peace in the township.

There are no justices of the peace in Springfield township since the establishment of the Municipal court of Springfield. Section 1579-715 provides for the jurisdiction of the municipal court of the City of Springfield.

Is the jurisdiction as prescribed in the above section, sufficient to give authority to the municipal judge of the City of Springfield to fill the vacancy in the board of township trustees, and if not, who shall have the appointing power to fill such vacancy?”

Section 1579-715 to which you refer, and which relates to the jurisdiction of the Municipal Court of the City of Springfield, among other things, grants jurisdiction as indicated in sub-section 1:

“All actions and proceedings of which justices of the peace courts, or such courts as may succeed justice of the peace courts, have or may be given jurisdiction.”

Section 1579-759 abolished the jurisdiction of justices of the peace in Springfield township. The only question presented would seem to be whether the language above

quoted in sub-section 1 of section 1579-715 is sufficiently broad to include the appointment of a trustee to fill a vacancy. In other words, is such an appointment a "proceeding" as referred to in this section?

Section 26 of the General Code provides in part that a repeal or amendment to a statute shall in no manner affect pending "proceedings" unless so expressed. Under this section there are a number of cases cited which it is believed by analogy apply to the case under consideration. In other words, in construing the section last mentioned, it has been necessary to interpret the meaning of the word "proceeding." In this connection a street improvement has been held to be a proceeding. 58 O. S., 225. In *State vs. Case*, 13 C. C. (N. S.) 449, it was held:

"Plans of a building commissioner are a proceeding within the meaning of this section."

Also a ditch improvement project was held to be a proceeding. *Opinions Attorney-General*, 1920, p. 211.

In view of the foregoing, it would seem to do no violence to the statutes to say that an action taken to appoint a trustee to fill a vacancy as referred to in section 3262 would be a proceeding such as would come under the jurisdiction of the Municipal Court of the city of Springfield. The law does not favor vacancies in office, and if the construction above adopted is not correct, then there is no means of filling the vacancy to which you refer.

You are therefore advised that it is the opinion of this department that under the provisions of section 1579-715 of the General Code of Ohio, the judge of the municipal court of the city of Springfield may fill a vacancy in the board of township trustees of Springfield township, thereby exercising the powers heretofore granted to justices of the peace of said township under the provisions of section 3252.

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

3905.

MAXIMUM COSTS THAT MAY BE CHARGED UNDER THE AMENDED GARNISHEE LAW.

SYLLABUS:

Under the amended garnishée law \$2.50 is the maximum amount that may be charged for costs, including the garnishée fee, in any proceeding to garnish wages: irrespective of the incidental actions instituted to enforce the judgment.

COLUMBUS, OHIO, December 22, 1926.

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

GENTLEMEN:—Acknowledgment is made of your communication requesting my opinion upon the following inquiries:

"Can a justice of the peace collect ten per cent of the wages of a married man on a bill (not for necessaries) that was incurred prior to July 17th, 1925, when the law changed?"