

as Director of such Department to The Gordon, Hauss, Folk Company of St. Marys, Ohio. By this lease, which is one executed by you in your official capacity as successor to the powers and authority of the State Canal Commission and of the State Board of Public Works, and under the authority of sections 464, 431 and 14009 of the General Code, there is leased and granted to the lessee above named the right to maintain a weir on the level of the Miami and Erie Canal above Lock No. 12, north of the Loramie Summit and to take through and over said weir such water as may be needed for the purpose only of operating the flour mill of said company as now used and operated by it on the present location of the mill on Lots 7 and 8 in Block 37 in the City of St. Marys, Ohio.

This lease is one for a term of ten years and provides for the payment of an annual rental for the water used in the sum of \$400.00, payable semi-annually on the first days of May and November in each and every year during the term of the lease.

Upon examination of this lease, I find that the same has been properly executed by you as Superintendent of Public Works and as Director of such Department and by the Gordon, Hauss, Folk Company, by the hand of its President acting under the authority of a resolution of the Board of Directors of said company. Upon examination of the provisions of this lease and of the conditions and restrictions therein contained, I find the same to be in conformity with the sections of the General Code above noted, under the authority of which the lease is executed.

I am accordingly approving this lease as to legality and form, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

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3352.

JUSTICE OF PEACE—OFFICIAL HOLDING EXISTING LINE COMMISSION OF EARLIEST DATE AUTHORIZED TO APPOINT UNDER SECTION 3265 G. C.

*SYLLABUS:*

*The phrase "oldest commission" appearing in section 3262, General Code, means the existing live commission of earliest date.*

COLUMBUS, OHIO, October 26, 1934.

HON. GEORGE N. GRAHAM, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, as follows:

"A vacancy has been created in a Board of Township Trustees in this county. In this particular township there are three Justices of the Peace, and a dispute has arisen over which Justice of the Peace has a right to appoint under section 3262 of the General Code.

One of the present Justices of the Peace held that office several years ago and then failed to run for re-election until 1931, when he was again elected. Another Justice of the Peace has held the office continually since 1925, and was last elected in November of 1933.

The dispute has arisen over the part of the statute which reads as follows: 'the justice of the peace of such township holding the oldest commission.' The Justice who was elected in 1931 claims that his is the oldest commission, whereas the Justice who has been continuously in office since 1925 claims that his is the oldest commission, although he was re-elected in 1933."

Section 3262, General Code, referred to in your communication, makes provision for the filling of vacancies in the office of township trustee, and reads as follows:

"When for any cause a township is without a board of trustees or there is a vacancy in such board, the justice of the peace of such township holding the oldest commission, or in case the commission of two or more of such justices bear even date, the justice oldest in years, shall appoint a suitable person or persons, having the qualifications of electors in the township to fill such vacancy or vacancies for the unexpired term. Wherever in any township a municipal court shall replace and supersede the justices of the peace, the municipal judge or the presiding municipal judge, if there be more than one, shall have the same powers to fill vacancies on the board of trustees."

The phrase "oldest commission" appearing in the above quoted section has been uniformly construed by many former Attorneys General, as well as by myself. In my opinion No. 846, rendered May 20, 1933, and reported in Opinions of the Attorney General for 1933, volume I, page 750, the opinions of former Attorneys General interpreting the words "oldest commission" appearing in section 3262, General Code, were reviewed and followed. The references of these opinions are, namely, Annual Report of the Attorney General for 1906, page 62; Annual Report of the Attorney General for 1910-1911, page 881; Opinions of the Attorney General for 1915, volume I, page 411; and Opinions of the Attorney General for 1918, volume I, page 358.

As pointed out in my 1933 opinion, above referred to, the words "oldest commission" have been held to refer to "live unexpired or existing commissions" of the justices of the peace, and it is immaterial as to what terms of office were served or commissions held by the existing justices prior to their current term of office.

Applying this construction to the facts of your communication, it follows that the justice of the peace who was elected in 1931, and is serving under the commission resulting from such election is entitled to make appointments to fill vacancies in the office of township trustee rather than the justice of the peace who was re-elected in 1933, and is now serving under the commission resulting from such re-election.

While you state in your letter that there are three justices of the peace in the township under consideration, you point out only the status of two of the said justices, and do not state at what date the third justice was last issued a commission. I therefore express no opinion as to whether or not he has the oldest live commission of the three justices of the peace and is entitled to make

the appointment. Of course, if the facts are that his existing commission bears a date earlier than that of the justice to whom you refer as having been elected in 1931, he would be entitled to make the appointment of a township trustee to fill the vacancy in such office.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

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3353.

APPROVAL, PAPERS AND PROCEEDINGS RELATING TO THE CONVERSION OF THE WESTERN HILL SAVINGS AND LOAN COMPANY INTO THE FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF CINCINNATI, OHIO.

COLUMBUS, OHIO, October 26, 1934.

HON. HARRY L. EVERTS, *Superintendent of Building and Loan Associations, Columbus, Ohio.*

DEAR SIR:—I have examined the papers recently submitted by you in connection with the conversion of The Western Hills Savings and Loan Company into the First Federal Savings and Loan Association of Cincinnati, and find the papers submitted and the proceedings of said association as disclosed thereby to be regular and in conformity with the provisions of section 9660-2 of the General Code of Ohio.

The papers are returned herewith to be filed by you as a part of the permanent records of your department.

The law provides that when the requirements of section 9660-2 have been complied with by the association you shall within ten days thereafter cause one copy of the Federal Savings and Loan Association charter with your approval endorsed thereon to be filed with the Secretary of State and transmit to the Secretary the sum of \$5.00 paid by the association.

I have drawn a form of approval for your signature endorsed on the copies of the charter. I have heretofore quoted to you the law as to the effect on the status of the old association of the filing with the Secretary of State of a copy of the charter and will therefore not repeat the same.

Respectfully  
 JOHN W. BRICKER,  
*Attorney General.*

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3354.

CERTIFICATE—TEACHER MUST POSSESS CERTIFICATE AT THE TIME CONTRACT OF EMPLOYMENT MADE—NEW CERTIFICATE MAY BE OBTAINED THEREAFTER.

SYLLABUS:

1. *Under the terms of Sections 7830, 7831 and 7832, General Code, a contract between a board of education and a teacher in the public schools cannot lawfully be entered into unless the teacher is possessed of a proper and legal*