

The constitution and statutory provisions refer to "terms" of county officers. The statutory provision for the election of a county auditor is that he shall be elected "quadrennially." It is significant also that the same statutory provision extended the terms of office of county auditors then in office "to the second Monday in March, 1923." And also, "the first regular election to the office of county auditor under this act shall be held in November, 1922." The first part of the section providing for quadrennial elections, and the above provision providing that the first regular election for the office of county auditor shall be held in November, 1922, evidently means *and every four years thereafter*.

Taking this view of the case submitted by your inquiry, it is my opinion that no vacancy in the office of county auditor of Putnam County exists such as would be entitled to be filled by election prior to the general election in November, 1926. It is my opinion that the present incumbent or appointee is entitled to continue to hold said office until the November election of 1926 and thereafter until his successor elected at said election duly qualifies for said office for the remainder of the unexpired term.

Respectfully,
C. C. CRABBE,
Attorney General.

1567.

STATE AID ROAD LAWS CONSTRUED—CONSTRUCTION AND MAINTENANCE OF BRIDGES ON AN INTER COUNTY HIGHWAY OR MAIN MARKET ROAD.

COLUMBUS, OHIO, June 7, 1924.

SYLLABUS:

A bridge wholly or partly within the limits of a city and on an inter-county highway or main market road, with the construction and maintenance of which the county commissioners are charged by law, may be constructed and maintained under what is commonly known as the state aid road laws.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

Gentlemen:—

This will acknowledge receipt of your recent communication and request for an opinion, as follows:

"The State and County of Miami are contemplating an improvement on I. C. H. No. 190 which consists mainly of a 2-Span Concrete bridge with a relatively small amount of paving on the approaches. This bridge is at the city limits of the City of Piqua and it develops that the corporation line is located at the center of the Miami River, which is spanned by the proposed bridge, thus placing about one-half the improvement within the city.

"Federal funds to the amount of \$50,000.00 have been assigned to this project to cover the State's share of the cost. The question arises as to whether Senate Bill No. 29 enacted at the last session of the legislature would permit the Department of Highways and Public Works to proceed with this project.

"I wish to call your attention in this connection to the law which does not permit the State to co-operate on highway projects within corporate limits of cities over five thousand in population.

"Your advice in this matter at an early date will be appreciated."

I assume that the bridge referred to by you is one with the construction and maintenance of which the county commissioners are charged by law. With this assumption, your inquiry may be put in this form:

May a bridge wholly or partly within the limits of a city and on an inter-county highway or main market road, and one with the construction and maintenance of which the county commissioners are charged by law, be constructed and maintained under what is commonly known as the state aid road laws?

In arriving at a conclusion of the proposition submitted by you, it is believed that it will be a benefit to review the history of the legislation in connection with the jurisdiction of the Director of Highways to construct, re-construct, repair or maintain streets or highways within the limits of a municipal corporation; and in doing so, it should be kept in mind that while the words "road" and "highway" as generic terms are broad enough to include streets, yet our legislature has for many years past made use of the words "road" and "highway" in dealing with improvements outside of municipalities, and the word "street" in dealing with improvements within municipalities. In fact, as a matter of common usage, the word "street" is understood as referring particularly to public ways within municipalities, and the words "road" and "highway" to like ways outside municipalities.

Opinions of Attorney General for 1919, Vol. I, p. 661.

Under section 1191 of the General Code, the original enactment of which is found in 106 Ohio Laws, 627, county commissioners were authorized to make application to the State Highway Commissioner for aid and thus initiate a proceeding resulting in the construction, improvement, maintenance or repair of an inter-county highway.

Under Section 1197, General Code, the original enactment of which is found in 106 Ohio Laws, 629, the State Highway Commissioner was authorized and directed to cause plans, specifications and estimates to be made for the construction or improvement of all bridges and culverts upon the section of highway to be improved. The section further provided for the payment of the cost of such construction or improvement.

Under these provisions and all other provisions of the state aid road law, originally, the jurisdiction of the highway authorities was limited to inter-county highways without the limits of municipalities. By the enactment of Section 1193-1 of the General Code, which is found in 107 Ohio Laws, 123, jurisdiction of the highway authorities was extended to the improvement of inter-county highways and main market roads into or through a village; but no provision was made for extending such jurisdiction to the improvement of inter-county highways and main market roads into and through a city.

The legislation referred to by you was passed February 28, 1923, (110 Ohio Laws, 452), and the same reads:

"Sec. 1197-1. In case a street in a municipality constitutes an extension or continuation of an inter-county highway or main market road into or through a municipality and there is on such street and within the corporate limits of such municipality a bridge or culvert with the construction or maintenance of which the county commissioners are charged by law, such county

commissioners may apply for and the director of highways and public works may in his discretion grant aid not exceeding one-half of the cost in the construction, re-construction, maintenance or repair of such bridge or culvert from any fund available for the construction, improvement, maintenance or repair of inter-county highways or main market roads. The application shall be made and the proceedings thereon had in conformity with the provisions of law relating to the state highway department. The county's share of the cost of an improvement under the provisions of this section may be paid out of any fund available for the construction, improvement, maintenance or repair of inter-county highways and main market roads. The authority granted in this section shall be in addition to and not in any wise limited by the provisions of sections 5638 to 5644 inclusive, of the General Code."

In Section 3497, General Code, the legislature has classified municipal corporations into two classes, namely, villages and cities. It will be noted that the legislation just quoted has reference and applies to streets in municipalities constituting an extension or continuation of an inter-county highway or main market road and authorizes the construction or maintenance of bridges and culverts on such streets, with the construction and maintenance of which bridges the county commissioners are charged by law. The language of this section is clear and explicit. When it used the word "municipality", it included cities as well as villages.

It would follow that a bridge wholly or partly within the limits of a city and on an inter-county highway or main market road and with the construction and maintenance of which the county commissioners are charged by law, may be constructed and maintained under what is commonly known as the state aid road laws; and, specifically answering the question in your communication, I am of the opinion and you are advised that your department is authorized under the law to assume jurisdiction and proceed to construct the bridge at the city limits of the City of Piqua, as proposed.

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

1568.

NO PROVISION FOR COMPENSATING TOWNSHIP TRUSTEES FOR DUTIES PERFORMED UNDER SECTION 6603 G. C.—WITNESS FEES NOT ALLOWED.

COLUMBUS, OHIO, June 9, 1924.

SYLLABUS:

Under Chapter 5 of House Bill 569, there is no provision for compensating township trustees for their duties under this chapter, and no provision for payment of witness fees.

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

Gentlemen:—

I am in receipt of your recent communication, in which you enclose a letter from the clerk of the Board of Lima Township Trustees, as follows: