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1. TOWNSHIP TRUSTEES—ENTITLED UNDER SECTION 3294 G. C. TO RECEIVE \$3.50 PER DAY FOR SERVICE IN BUSINESS OF TOWNSHIP—WHERE BUDGET FOR CURRENT FISCAL YEAR IS BETWEEN \$10,000.00 AND \$20,000.00 THEY ARE LIMITED TO COMPENSATION FOR PERIOD OF ONE HUNDRED TWENTY-FIVE DAYS—AMOUNT OF BUDGET IS CONTROLLING FACTOR AS TO NUMBER OF DAYS TO BE PAID.
2. WORK OF TOWNSHIP TRUSTEE ON ROADS OF HIS TOWNSHIP IS SERVICE IN THE BUSINESS OF THE TOWNSHIP AND SUBJECT TO LIMITATIONS PROVIDED BY SECTION 3294 G. C.
3. UNLAWFUL FOR TOWNSHIP TRUSTEE TO OPERATE ROAD EQUIPMENT IN SERVICE OF HIS TOWNSHIP AT RATE OF COMPENSATION GREATER THAN PROVIDED IN SECTION 3294 G. C., \$3.50 FOR EACH DAY OF SERVICE.

SYLLABUS:

1. Township trustees are entitled under the provisions of presently effective Section 3294, General Code, to receive the sum of three dollars and fifty cents per day for service in the business of the township, and where the amount of the budget of such township for the current fiscal year is between ten and twenty thousand dollars, they are limited to such compensation for a period of one hundred and twenty-five days. It is the amount of the budget, determined by the budget commission of the county and any amendments and supplements thereto, that is the controlling factor in the determination of the number of days for which compensation to township trustees may be paid.

2. Under the provisions of presently effective Section 3294, General Code, the work of a township trustee on the roads of his township is "service in the business of the township" and is subject to the limitations provided by said section.

3. Under the provisions of Section 12912, General Code, it is unlawful for a township trustee to operate road equipment in the service of his township at a rate of compensation greater than that provided in Section 3294, General Code, namely, three dollars and fifty cents for each day of such service.

Columbus, Ohio, August 23, 1951

Hon. William H. Irwin, Prosecuting Attorney
Belmont County, St. Clairsville, Ohio

Dear Sir :

I have before me your request for my opinion reading as follows :

“Various township trustees have requested this office for an opinion regarding compensation for said trustees pursuant to Section 3294 of the General Code.

“In the instant case, the Trustees of Warren Township have set up for the year 1951 a budget in the amount of \$19,000.00. They inform me that they will receive approximately \$14,000.00. They have also informed me that they had a balance from 1950 of approximately \$7,000.00, which would give them an operating total of \$21,000.00 for the year 1951. The questions are :

“Are the trustees entitled to compensation based on \$21,000.00, or

“Are the trustees entitled to compensation based on their budget of \$19,000.00, or

“Are the trustees limited to the \$14,000.00 which they will actually receive from the current taxes for the year 1951 ?

“Also in this connection I would appreciate your opinion on the following question :

“In an emergency where an operator of road equipment becomes ill or unable to work and where it becomes necessary for a trustee to operate this equipment, is the trustee entitled to the same compensation as the regular operator ?”

The compensation of township trustees is governed by the provisions of presently effective Section 3294, General Code, which reads as follows :

“Each trustee shall be entitled to five dollars for each day of service in the discharge of his duties in relation to partition fences, to be paid in equal proportions by the parties, and three dollars and fifty cents for each day of service in the business of the township, to be paid from the township treasury. Provided, however, that in townships having a budget of less than ten thousand dollars, the trustees shall be entitled to compensation for not more than one hundred days at said rate of three dollars and fifty cents per day ; in townships having a budget of from ten thousand to twenty thousand dollars, the trustees shall be

entitled to compensation for not more than one hundred and twenty-five days at said rate of three dollars and fifty cents per day; in townships having a budget of from twenty thousand to thirty thousand dollars, the trustees shall be entitled to compensation for not more than one hundred and fifty days at said rate of three dollars and fifty cents per day; and in townships having a budget of thirty thousand dollars or over, the trustees shall be entitled to compensation for not more than one hundred and seventy-five days at said rate of three dollars and fifty cents per day. Each trustee shall present an itemized statement of his account for such per diem and services, which shall be filed with the clerk of the township, and by him preserved for inspection by any persons interested."

Under the provisions of Section 5625-20, General Code, each subdivision or other taxing unit, which includes a township, is required on or before July 15 of each year to prepare and adopt a budget for the next succeeding fiscal year. It is stated in your letter that the budget of the township in question for the year 1951 was fixed in the amount of \$19,000.00.

Presently effective Section 3294, General Code, *supra*, makes it clear that the maximum number of days for which a trustee is allowed compensation for "service in the business of the township" operating under such a budget is one hundred and twenty-five days. Under the terms of the statute, the budget is the only measure of this maximum.

Accordingly, it seems quite clear that the trustees of the township in question are entitled to receive for their service in the business of the township the sum of three dollars and fifty cents per day for not more than one hundred and twenty-five days. The statute, as it now reads, does not say that they are to receive this amount for the year, but, inasmuch as the amount is determined on the basis of the budget for the year, it is my opinion that the fiscal year is the period during which the maximum sum may be earned and paid.

Coming to your second question as to the right of a trustee to operate road equipment in an emergency and to receive the compensation that would be paid to a regular operator, I call attention to Section 12912, General Code, which makes it unlawful for a township trustee to have any interest in the "profits of a contract, job, work or services" for his township and subjects him to a fine or imprisonment, or both, for its violation.

Such trustee would not have the right to do such work in his own township under employment by a road superintendent or another trustee in charge of such road improvement. If he did accept such employment, he would run counter to Section 12912, General Code, supra.

Accordingly, in specific answer to your questions, it is my opinion :~

1. Township trustees are entitled under the provisions of presently effective Section 3294, General Code, to receive the sum of three dollars and fifty cents per day for service in the business of the township, and where the amount of the budget of such township for the current fiscal year is between ten and twenty thousand dollars, they are limited to such compensation for a period of one hundred and twenty-five days. It is the amount of the budget, determined by the budget commission of the county and any amendments and supplements thereto, that is the controlling factor in the determination of the number of days for which compensation to township trustees may be paid.

2. Under the provisions of presently effective Section 3294, General Code, the work of a township trustee on the roads of his township is "service in the business of the township" and is subject to the limitations provided by said section.

3. Under the provisions of Section 12912, General Code, it is unlawful for a township trustee to operate road equipment in the service of his township at a rate of compensation greater than that provided in Section 3294, General Code, namely, three dollars and fifty cents for each day of such service.

Respectfully,

C. WILLIAM O'NEILL
Attorney General