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TOWNSHIP CLERK—MONEYS PAID OUT OR DISBURSED BY TOWNSHIP CLERK—TO REDEEM OUTSTANDING TOWNSHIP BONDS—EXPENDITURES—SHOULD BE CONSIDERED TO DETERMINE AMOUNT CLERK SHALL RECEIVE FOR COMPENSATION—SECTION 3308 G. C.

SYLLABUS:

Moneys that are paid out or disbursed by a township clerk to redeem outstanding township bonds are expenditures within the meaning of Section 3308, General Code, and such amounts are to be taken into consideration in determining the amount said clerk shall receive for his compensation thereunder.

Columbus, Ohio, February 27, 1948

Hon. H. K. Bostwick, Prosecuting Attorney
Geauga County, Chardon, Ohio

Dear Sir:

Your request for my opinion reads:

“The Township of Thompson has some outstanding township bonds and their township clerk makes an expenditure to take up these bonds as they become due and to pay the interest on other bonds. He has asked me to obtain your opinion as to whether or not he is allowed his two per cent under Section 3308 on these expenditures.”

Before quoting the pertinent portion of present Section 3308, General Code, a few preliminary observations should be made. As amended in March, 1917 (107 O.L. 651) Section 3308, General Code, provided that a township clerk shall be entitled to certain specified fees to be paid by the parties requiring his services. It was also provided therein that for performing certain stated duties and such other business as the township trustees require of him said clerk shall be allowed reasonable compensation. However, the maximum compensation therefor was fixed at \$250.00 for any one year.

In March, 1917, the General Assembly, by virtue of the same act whereby then Section 3308, General Code, was amended, also amended Section 3318, General Code, to read as now set forth:

“The treasurer shall be allowed and may retain as his fees for receiving, safe keeping and paying out moneys belonging to the township treasury, two per cent of all moneys paid out by him upon the order of the township trustees, but in no one year shall he be entitled to receive from the township treasury more than one hundred and fifty dollars, except that in a township wherein a city is located and such city is a part of such township, a township treasurer shall be entitled to receive from the township treasury not more than three hundred dollars in one year.”

In 1923 (110 O.L. 30) the office of township treasurer was abolished and it was provided by the enactment of supplemental Section 3316-1, General Code, that the township clerk “shall perform all the services, discharge all the duties and be subject to all the obligations formerly required by law of the township treasurer.” However, no legislative action was taken at that time with respect to Section 3308, General Code, and as a result the then \$250.00 limitation as to the clerk’s compensation continued in force and effect.

On September 2, 1939, present Section 3308, General Code, became effective (118 O.L. 575). At that time no change was made therein with respect to the fees to be paid to the clerk by the parties requiring his services. However, the last sentence of the old section, which provided for maximum compensation of \$250.00, was replaced by the following proviso:

“ * * * Provided, however, in those townships having a budget less than five thousand dollars, the township trustees shall determine the salary of the clerk which in no event shall exceed three hundred and fifty dollars per year; and in townships having a budget of five thousand dollars or over, the clerk shall receive two per cent of the total *expenditures* of such township in excess of five thousand dollars in addition to the amount above provided in townships having a budget of less than five thousand dollars, provided, however, no township clerk shall receive for his compensation in excess of six hundred dollars in any one calendar year for said services as such township clerk.”

(Emphasis added.)

It is patent that your inquiry, wherein reference is made to the just noted section, presents for determination the matter of whether, in paying out or disbursing funds to take up or redeem township bonds, the clerk makes “expenditures.” Touching on that proposition is an opinion of one of my predecessors which will be found in Opinions of

the Attorney General for 1920, Vol. I, page 53, wherein the first branch of the syllabus reads:

“Township treasurers, by virtue of section 3318 G. C. as amended, 107 O.L., 652, are entitled to the two per cent fee therein named upon moneys paid out by them on the order of the township trustees for the cost and expense of road improvements under sections 3298-1 to 3298-15n G. C.; *but they are not entitled to fees on moneys paid over in redemption of bonds issued on account of such improvements, or in reimbursement of township funds for moneys advanced on account of the assessment share.*” (Emphasis added.)

The reasoning supporting this conclusion will be found at page 57 of said opinion, where it is said:

“It has been stated that the treasurer is not to collect compensation for his payments on account of redemption of bonds or on account of reimbursement of the township treasury for moneys advanced on account of the assessment share. The reason for such statement is plain. It has been seen that fees accrue to the treasurer upon his paying, by order of the trustees, current items of expense of the improvement, such, for instance, as estimates to the contractor. The fund for paying such items is in the township treasury, either as the result of the sale of bonds or of the accrual of tax levies. Therefore, in paying over money by way of redeeming the bonds, or in reimbursing the proper fund of the township treasury for moneys advanced out of it on account of property owners' share, the treasurer is not in any true legal sense paying out moneys on the order of the township trustees, he is merely turning over to their owners funds which may be described as trust funds. No discretion rests either in the township trustees or the treasurer in the matter of turning over the funds, though of course they are under the duty of seeing that they are turned over to the person or fund entitled to them. The moneys which are so being repaid furnished in the first instance the very fund out of which treasurer's compensation has once accrued, and again, so far as assessment collections are concerned, they embrace a proportionate share of such compensation; so that to hold that the treasurer is entitled to compensation a second time would yield not only the illogical result of double fees, but also of fees on fees already paid him.”

It may be suggested that, in the light of this aforementioned 1920 opinion, in computing the compensation to which a township clerk may be legally entitled under the provisions of Section 3308, General Code, there should be eliminated from consideration disbursements that are

made for the purpose of taking up or redeeming township bonds. Careful analysis of that opinion will reveal it cannot be regarded as authority for such a claim. A comparison of the language of former Section 3318, General Code, with that of the proviso in present Section 3308, General Code, is interesting and should be noted. In Section 3318, General Code, specific reference was made to "moneys belonging to the township treasury." No such language or its equivalent will be found in said Section 3308, General Code. Instead the reference therein is to "total expenditures of such township." This language is certainly plain and unambiguous. It cannot reasonably be said that the word "expenditures" is either a technical or legal term. On the contrary it is a word of common usage. Webster's New International Dictionary, Second Edition, defines "expenditure" as follows:

"Act of expending ; a laying out, as of money ; disbursement."

See also 35 C.J.S., p. 207, where, in respect of the word "Expenditure," it is said:

"The act of expending ; disbursement, expense, money expended, a laying out, as of money, or the spending of money ; also, sometimes, payment. The meaning of the word is particularly governed by its context.

"It has been held synonymous with 'disbursement'."

It is a general proposition of law that when common terms are used in a statute they should be given their common meaning. See 2 Sutherland Statutory Construction Sec. 4919.

It is highly significant that the General Assembly, in the enactment of Section 3308, General Code, made no reference whatever to the types or kinds of expenditures on which the clerk's statutory compensation is to be based. Instead reference is made merely to "total expenditures." Had it been the legislative intent to exclude from the definition of the word "expenditures" the disbursement of funds to redeem bonds, it is not unreasonable to conclude that some expression to such effect would have been embodied in the statute here being considered.

Whether the Attorney General for 1920 correctly interpreted the meaning of then Section 3318, General Code, is presently not a matter of any particular concern. It is sufficient to state in conclusion that the meaning of a different code section was involved and the supporting

reasoning is not to be regarded as applicable in the case of the interpretation to be given Section 3308, General Code.

It is therefore my opinion, and you are so advised, that moneys that are paid out or disbursed by a township clerk to redeem outstanding township bonds are expenditures within the meaning of Section 3308, General Code, and such amounts are to be taken into consideration in determining the amount said clerk shall receive for his compensation thereunder.

Respectfully,

HUGH S. JENKINS,
Attorney General.