

water supply, shall mean any or all of the following: Wells, springs, streams or other source of water supply, pumping equipment, treatment or purification plants, distributing mains, cisterns, reservoirs, necessary equipment for fire protection, other equipment, and lands, rights-of-way and easements, necessary for the proper development and distribution of the supply. * * *

In view of the foregoing, namely, that the township trustees have only such powers as are expressly granted to them by statute, or such as are necessary to carry into effect the powers expressly granted, and since no expenditures may be made from the township treasury except when authorized by law, and since investigation discloses no authority, either express or implied, conferred upon a board of township trustees to install a reservoir and water lines for fire protection, and taking into consideration the fact that provision is made elsewhere for the furnishing of such fire protection by the county commissioners, I am of the opinion that a board of township trustees may not install a reservoir and water lines for providing a supply of water for fire fighting purposes.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3855.

APPROVAL, BONDS OF CLARK COUNTY, OHIO—\$9,946.33.

COLUMBUS, OHIO, December 15, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3856.

PROBATE COURT—DIVORCE ACTIONS PENDING IN SUCH COURT
NOT AFFECTED BY REPEAL OF SECTION 10494, GENERAL
CODE.

SYLLABUS:

Where divorce actions are pending in Probate Courts by reason of the jurisdiction conferred on such courts under Section 10494, General Code, prior to January 1, 1932, the date upon which the repeal of said section becomes effective, such jurisdiction continues by reason of the provisions of Section 26, General Code.

COLUMBUS, OHIO, December 15, 1931.

HON. NORMAN L. McLEAN, *Prosecuting Attorney, Washington C. H., Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication, which reads as follows:

“The Probate Judge of Fayette County has requested me to procure from you an opinion upon the following question:

Section 10494 of the General Code of Ohio gives the Probate

Court of this county concurrent jurisdiction with the Common Pleas Court in divorce cases. This section has been repealed by the legislature and under the new probate code the Probate Court no longer has jurisdiction. Has the Probate Court jurisdiction in divorce cases which are filed in that court between this date and January 1, 1932, and which under section 11985, would not be for hearing until after January 1, 1932. If the Probate Court does not have jurisdiction to hear the cases after January 1, 1932, what disposition should the court make of the cases which are then pending?"

Section 10494 of the General Code, reads:

"In the counties of Pickaway, Licking, Richland, Perry, Defiance, Henry, Fayette and Coshocton, the Probate Court shall have concurrent jurisdiction with the court of Common Pleas in all proceedings in divorce, alimony partition, and foreclosure of mortgages. In such suits or proceedings in the probate courts of such counties, it shall have jurisdiction to make, and enter any finding, order, judgment or decree, which the common pleas could make, and enter in such suits or proceedings."

As stated in your letter, the section above quoted was expressly repealed by the new Probate Code which becomes operative on January 1, 1932. An examination of the Probate Code does not disclose any provisions therein for the transferring of any such cases as you mention from the Probate Court, to the Court of Common Pleas for completion.

In this connection, it becomes important to consider the provisions of Section 26 of the General Code, which reads:

"Whenever a statute is repealed or amended, such repeal or amendment shall in no manner affect pending actions, prosecutions, or proceedings, civil or criminal, and when the repeal or amendment relates to the remedy, it shall not affect pending actions, prosecutions, or proceedings, unless so expressed, nor shall any repeal or amendment affect causes of such action, prosecution, or proceeding, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act."

There is therefore no doubt but that a divorce proceeding is a civil action within the terms of Section 26, supra.

Upon reviewing the numerous decisions of the courts construing the above section, extreme care must be exercised to avoid confusion, in view of the number of changes that have been made in the section since its original enactment. Without attempting to mention herein the numerous decisions upon the subject, it is believed sufficient to refer to the case of *Elder et al v. Shoffstall et al.*, 90 O. S., 265, wherein an opinion by the late Judge Donahue is dispositive of the question you present. An analysis of said opinion will clearly disclose that an action for divorce pending in the Probate Court would not be affected by the repeal of the jurisdictional section in the absence of an express provision to that effect.

The Elder case, above referred to, was cited with approval in an opinion by Chief Justice Marshall, in the case of *Smith v. New York Central Railroad*

Company, 122 O. S. 45. The following is quoted from said opinion in the Smith case:

“Section 26, as interpreted in *Elder v. Shaffstall*, must be read into the amendment and made a part of the same as if expressly made one of its terms.”

In view of the foregoing, it is my opinion that where divorce actions are pending in Probate Courts by reason of the jurisdiction conferred on such courts under Section 10494, General Code, prior to January 1, 1932, the date upon which the repeal of said section becomes effective, such jurisdiction continues by reason of the provisions of Section 26, *supra*.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3857.

APPROVAL, ABSTRACT OF TITLE TO LAND OF W. C. MOORE IN
THE VILLAGE OF MARYSVILLE, OHIO.

COLUMBUS, OHIO, December 15, 1931.

HON. O. W. MERRELL, *Director, Department of Highways, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication submitting for my examination and approval an abstract of title, deed form, encumbrance estimate and board of control certificate relating to the proposed purchase by the State of Ohio of two certain parcels of land which are owned of record by one W. C. Moore and are located in the village of Marysville, Ohio.

The tracts of land here in question are a part of Survey No. 3351 and are more particularly described as follows:

Beginning at the point of intersection of the center line of Chestnut Street with the south line of the C. C. C. & St. L. Ry. and 25 feet from the center of said track; thence with the south line of said Railroad lands N. 71 deg. East 14.25 poles to a stake at the northwest corner of the C. L. Williams, Trustee, lands; thence with the west line of said land South 19 deg. East 13.21 poles to a stake at the northeast corner of Casper Ruhl's 70/100 acre tract; thence with the north line of said tract South 78 deg. 30' West 16.45 poles to a stake in the center of said Street; thence with the center of said Street, North 8 deg. 15' West 11.02 poles to the beginning.

Containing 1.18 acres, more or less.

Also the following real estate being part of Survey No. 3351, and bounded and described as follows:

Beginning at a stake in the south line of the C. C. C. & St. L. Railway, and 25 feet from the center of the main track, being also