

<i>Portage Lakes</i>	<i>Valuation</i>
Roscoe Allerton, store-house site-----	\$800 00
R. H. Cross, boat-house site-----	100 00
H. C. Cochran, boat-house, bathing beach-----	100 00

<i>Water Leases</i>	<i>Valuation</i>
Charles Bentz, one inch pipe, Indian Lake-----	\$166 67
Chicago & Erie R. R. Co., 8 inch pipe, M. & E.-----	7,300 00

I have carefully examined said leases, find them correct in form and legal, and am therefore returning the same with my approval endorsed thereon.

Respectfully,

C. C. CRABBE,
Attorney General.

2034.

COMBINING OF PROBATE COURT WITH COURT OF COMMON PLEAS—
DATE CONSOLIDATION SHALL TAKE EFFECT.

SYLLABUS:

1. Pursuant to the provisions of Section 1604-3 G. C., when a majority of the votes cast at an election shall be in favor of combining the probate court with the court of common pleas of a given county, such courts shall stand combined and consolidated at the expiration of the term, for which the probate judge, then serving has been elected.

2. The constitutionality of the above mentioned section is not considered in this opinion.

COLUMBUS, OHIO, December 6, 1924.

HON. S. S. BEARD, *Prosecuting Attorney, Paulding, Ohio.*

Dear Sir:—

This will acknowledge receipt of your recent communication requesting the opinion of this department as follows:

“At the recent election, the question of combining the Probate Court with the Common Pleas Court was submitted to the electors of his county. It carried by a substantial majority. At the same election a candidate was elected to the office of probate judge. The term of the present probate judge will expire on the 9th day of February, 1925. We would be pleased to have an opinion as to when the two offices shall be combined.”

Section 1604-3 G. C. governs the conduct of an election, the form of the ballot, and the procedure generally for the submitting of this question to the voters. The last paragraph of this section containing the language material for this inquiry is as follows:

"* * * If a majority of the votes cast at such an election shall be in favor of combining said courts, such courts shall stand combined and consolidated at the expiration of the term for which the probate judge has been elected in the county wherein such election has been held."

According to the facts stated in your letter, the voters of Paulding County by a substantial majority voted to combine the probate court with the court of common pleas of that county on November 4th, last. There was also elected on the same day a judge of the probate court for a term of four years.

The voters of your county, therefore, among other things, had submitted to them at this election the question of combining the probate court with the court of common pleas of your county. This question carried affirmatively.

They also had submitted to them candidates for the office of judge of the probate court, one of whom such was elected.

It may reasonably be inferred therefore that the voters had in mind that they were in favor of the combination of the courts, which carried affirmatively, but in the event that this question should not so carry, they were then voting their choice of the candidates.

You state in your letter that "the term of the present probate judge, will expire on the 9th day of February, 1925." Taking your statement as correct, the last paragraph of section 1604-3 G. C. as follows:

"* * * If a majority of the votes cast at such an election shall be in favor of combining said courts, such courts shall stand combined and consolidated at the expiration of the term for which the probate judge has been elected in the county wherein such election has been held,"

answers your inquiry in our opinion.

Article IV, Section 7 of the Constitution of Ohio pertinent to this question is as follows:

"There shall be established in each county, a probate court, which shall be a court of record, open at all times, and holden by one judge, elected by the electors of the county, who shall hold his office for the term of four years, and shall receive such compensation, payable out of the county treasury, as shall be provided by law. Whenever ten percentum of the number of the electors voting for governor at the next preceding election in any county having less than sixty thousand population as determined by the next preceding federal census, shall petition the judge of the court of common pleas of any such county not less than ninety days before any general election for county officers, the judge of the court of common pleas shall submit to the electors of such county the question of combining the probate court with the court of common pleas, and such courts shall be combined and shall be known as the court of common pleas in case a majority of the electors voting upon such question vote in favor of such combination."

The first paragraph of the syllabus in the case of City of Elyria vs. Vandemark, 100 O. S., 365, is as follows:

"When a public office is abolished by duly constituted authority, the in-

cumbent thereof ceases to be an officer, for he cannot be a *de facto* officer of an office no longer in existence."

The court on page 369 uses the following language:

"The authority to create an office and the power to abolish the same are co-existent, and hence the tribunal authorized to create an office may abolish such office any time it chooses, either during or at the end of the term of any incumbent of such office. The incumbent would not be entitled to compensation thereafter, for he could not be a *de facto* officer of an office which was no longer in existence. It is well settled in this state that when an office is abolished by duly-constituted authority the incumbents thereof cease to be officers, for there can be no incumbent without an office."

In view of the foregoing provisions of the Constitution of Ohio and decision,
Query:

Whether or not the constitutional provision above mentioned is self-executing?

I find no adjudication in Ohio upon this question, and until the question is decided by a court of competent jurisdiction, we give it as our opinion that the two offices shall stand combined as of the date mentioned in your letter, February 9, 1925, in harmony with the last paragraph of Section 1604-3 G. C.

Respectfully,

C. C. CRABBE,

Attorney General.

2035.

APPROVAL, BONDS OF VILLAGE OF WILLARD, HURON COUNTY,
\$62,000.00, TO IMPROVE WATER AND ELECTRIC LIGHT PLANT.

COLUMBUS, OHIO, December 6, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2036.

APPROVAL, BONDS OF VILLAGE OF AMHERST, LORAIN COUNTY,
\$18,000.00, TO PAVE MILAN AVENUE.

COLUMBUS, OHIO, December 6, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.