

respective rates of interest as stated in the bond ordinance. None of the advertisements contains a provision that bids will be received based on a lower rate of interest than that stated in the advertisement. The tabulations of bids show that bids were received based upon rates of  $4\frac{1}{2}\%$ ,  $4\frac{3}{4}\%$  and  $5\%$  and in each case the highest bid based on a  $4\frac{1}{2}\%$  rate was accepted.

Section 2293-28, General Code, provides that the bond advertisement "may also state that anyone desiring to do so may present a bid or bids for such bonds based upon their bearing a different rate of interest than specified in the advertisement, provided however, that where a fractional interest rate is bid such fraction shall be one-quarter of 1 per cent or multiples thereof."

Section 2293-29, General Code, provides that the highest bid, or if bids are received based upon a different rate of interest than specified in the advertisement the highest bid based upon the lowest rate of interest, presented by a responsible bidder, shall be accepted by the taxing authority, or in the case of a municipal corporation by the fiscal officer.

The purpose of advertising bonds for sale is to invite the public generally to enter into competition for the purchase of the same and unless the advertisement or invitation to bid permits of free competition among all bidders, it is my opinion that the acceptance of a bid which is not on a strict competitive basis is void.

From a study of Sections 2293-28 and 2293-29, General Code, it is my opinion that unless the advertisement states that bids may be presented based upon their bearing a different rate of interest, the acceptance of a bid based upon a lower or different rate of interest is void. Unless the advertisement contains such a provision there is no assurance that a bidder who based his bid upon the amount of interest stated in the advertisement would not have submitted a bid based upon a different rate of interest, higher than the bid which was in fact accepted.

It is therefore my opinion that the acceptance in the instant case of a bid, based upon a rate of interest lower than that specified in the advertisement, there being no provision in the advertisement that bids might be submitted based upon a different rate of interest, is void and I am therefore compelled to advise you not to purchase the above issue of bonds.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*

1317.

MUNICIPAL COURT OF EAST LIVERPOOL—JUDGE HAS NO AUTHORITY TO MAKE APPOINTMENT FILLING VACANCY IN BOARD OF TOWNSHIP TRUSTEES.

*SYLLABUS:*

*The judge of the municipal court of the city of East Liverpool has no power or authority to make an appointment for the purpose of filling a vacancy in the board of township trustees of Liverpool township.*

COLUMBUS, OHIO, November 30, 1927.

HON. ROBERT M. BROOKES, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication under date of November 17, 1927, in which my opinion is requested with respect to the power and authority of the judge of the municipal court of the city of East Liverpool, Colum-

biana County, Ohio, to appoint a township trustee to fill a vacancy in the board of township trustees of Liverpool township, said county. Your letter is as follows:

"The Eighty Sixth General Assembly established a municipal court in the city of East Liverpool, and by its act abolished the office of Justice of the Peace in Liverpool township, vesting their powers in the Municipal Judge.

Section 3262 of the General Code provides that a vacancy on the Board of Township Trustees shall be filled by appointment by the oldest Justice of the Peace in the township.

I would appreciate your opinion as to the power of the Municipal Judge to fill such a vacancy."

Section 3262, General Code, referred to by you, reads as follows;

"When for any cause a township is without a board of trustees or there is a vacancy in such board, the justice of the peace of such township holding the oldest commission, or in case the commission of two or more of such justices bear even date, the justice oldest in years, shall appoint a suitable person or persons, having the qualifications of electors in the township to fill such vacancy or vacancies for the unexpired term."

By an act passed April 17, 1925 (111 O. L. 430), the legislature provided for the establishment of a court of record in and for the city of East Liverpool and Liverpool township in said county, to be known as "The Municipal Court of East Liverpool, Ohio." Said act fixed the jurisdiction of said court and provided for a judge and other necessary officers thereof. The provisions of this act were carried into the General Code as Sections 1579-867 to 1579-909, inclusive. Section 1579-868, General Code, provided that the first election of the judge of said court should be held at the time of regular municipal and township elections in 1925, and that the term of office of such municipal judge should commence on the first day of January next after election. By Section 1579-907, General Code, it was provided that upon the qualification of said municipal judge, the jurisdiction of the mayor of the city of East Liverpool and of all justices of the peace of Liverpool township "in all civil and criminal matters" should cease, and that no justice of the peace or constable should thereafter be elected in said township. Provision was further made (1579-906, G. C.), that all proceedings, judgments, executions, dockets, papers, etc., in the jurisdiction of the court of any justice of the peace for Liverpool township on December 31, 1925, should be turned over to the municipal court established by said act.

The above noted provisions of Sections 1579-906 and 1579-907, General Code, had the effect of abolishing the offices of the justices of the peace in Liverpool township upon the qualification of the judge of the said municipal court. Under the provisions of said Section 3262, General Code, a vacancy in the office of township trustee cannot be filled by an appointment made by any justice of the peace other than one in the township where such vacancy exists. Unless, therefore, the power and authority to make an appointment to fill such vacancy in the office of township trustee of Liverpool township has been given to the judge of the municipal court of the city of East Liverpool by the act creating said court, no appointment to fill said vacancy can be made.

A reading of the provisions of the act establishing said municipal court and prescribing the jurisdiction and authority of said court and of the judge thereof fails to disclose anything even remotely touching the questions submitted by you, except possibly certain language contained in the provisions of Section 1579-869, General Code, defining the civil jurisdiction of said municipal court. Said section, after making certain provisions with respect to the criminal jurisdiction of said court, provides:

"Said municipal court shall have ordinary civil jurisdiction within the limits of the city of East Liverpool and township of Liverpool in said County of Columbiana and State of Ohio, in the following cases:

(1) In all actions and proceedings of which justices of the peace, or such courts as may succeed justices of the peace courts, have or may be given jurisdiction." \* \* \*

Touching the inquiry made in your letter, the only possible question made by the above quoted provision of said Section 1579-869, General Code, is whether the appointment of a township trustee, by a justice of the peace, to fill a vacancy in said office of township trustee, is a proceeding within the meaning of the term "proceeding" as used in the above quoted provisions of Section 1579-869, General Code.

In the case of *Irwin vs. Bank of Bellefontaine*, 6 O. S. 86, 87, it is said:

"The word 'proceeding' is generally applicable to any step taken by a suitor to obtain the interposition or action of a court."

In *Wilson vs. Allen* (N. Y.), 3 How. Pr. 371, it is said:

"The term 'proceeding' is generally applicable to any step taken by a party in the progress of a civil action. Anything done from the commencement to the termination of the action is a proceeding."

The proper use of the term "proceeding" is not, of course, limited to the various steps taken by the parties to an action in a court. Thus it has been held that a resolution by a board of county commissioners declaring or finding in favor of a county road improvement is a "proceeding" within the meaning of the term as used in Section 26, General Code. (*State ex rel. vs. Zangerle*, 101 O. S. 235.)

The same is true as to the various steps taken by the council of a municipality with respect to a street improvement. (*Raymond vs. Cleveland*, 42 O. S. 522.)

Likewise, a resolution of the board of education of a school district, providing for the issue and sale of bonds, may be a "proceeding" within the meaning of said Section 26, General Code. (*State ex rel. vs. Ach*, 113 O. S. 482.)

Doubtless other steps taken and acts done by officers and boards in the initiation or furtherance of public improvements or projects may be properly spoken of as proceedings. I am persuaded, however, that the context of the word "proceeding", as used in Section 1579-869, General Code, as well as the manifest purpose of the whole of the language of said section, above quoted, forbids a construction that would bring the act of a justice of the peace appointing a township trustee within the meaning of the word as used in said section. The purpose of said section and the language thereof above quoted is to confer on said municipal court certain "ordinary civil jurisdiction", a part of which is actions and proceedings that now or hereafter may be within the jurisdiction of justices of the peace. The appointment of a township trustee cannot be properly considered as an act coming within the ordinary civil jurisdiction of a court.

I am, therefore, of the opinion that the judge of the municipal court of the city of East Liverpool has no power or authority to make an appointment for the purpose of filling a vacancy in the board of township trustees of Liverpool township.

The conclusion reached by me in this opinion is not in accord with that of opinion number 3904 of this department, issued under date of December 22, 1926, with respect to the power and authority of the judge of the municipal court of Springfield, Ohio, to make an appointment to fill a vacancy in the board of township trustees of Springfield Township, Clark County. (Opinions of Attorney General, 1926, p. 556.) This opinion, however, is in accord with opinion No. 411, issued by this department under

date of April 29, 1927, on a question submitted with respect to the power and authority of the judge of the municipal court of Piqua, Ohio, to make such an appointment.

It follows from the conclusion reached by me on the question here submitted that the vacancy in the board of township trustees of Liverpool township cannot be filled otherwise than by the election of some person at the time and in the manner provided for the election of township officers.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

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1318.

DISAPPROVAL, BONDS OF THE VILLAGE OF SOUTH EUCLID, CUYA-  
HOGA COUNTY, OHIO—\$73,000.00.

COLUMBUS, OHIO, November 30, 1927.

Re: Bonds of the Village of South Euclid, Cuyahoga County, Ohio, \$73,000.00.

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

GENTLEMEN:—A transcript of the proceedings of council and other officers of the Village of South Euclid pertaining to an issue of special assessment bonds in the sum of \$224,070.00 to cover the property owners' portion of the cost of seven different improvements, of which issue the Retirement Board desires to purchase bonds in the sum of \$73,000.00, has been submitted to this department for examination.

The bond ordinance was passed on July 25, 1927, and provided that said bonds should bear interest at the rate of 5% per annum, payable semi-annually. The bonds were offered to the sinking fund commissioners and rejected and were then advertised for sale. Pursuant to said advertisement one bid was received for said bonds, based on the bonds bearing interest at the rate of 5½% per annum. No bids were received based on the bonds bearing interest at 5%, the rate specified in the bond ordinance and in the advertisement. On September 6, 1927, the above bid, based on a 5½% return, was declared to be the highest bid and accepted and on October 24, 1927, council amended the original bond ordinance, the amendment providing that bonds should bear interest at the rate of 5½% per annum.

Section 2293-28, General Code, provides among other things that the bond advertisement "may also state that anyone desiring to do so may present a bid or bids for such bonds based upon their bearing a different rate of interest than specified in the advertisement, provided, however, that where a fractional interest rate is bid such fraction shall be one-quarter of 1 per cent or multiples thereof."

Section 2293-29, General Code, provides that the highest bid, or if bids are received based upon a different rate of interest than specified in the advertisement the highest bid based upon the lowest rate of interest, presented by a responsible bidder, shall be accepted by the taxing authority, or in the case of a municipal corporation by the fiscal officer.

The advertisement of the sale of bonds above referred to does not state that anyone desiring to do so may present a bid or bids for such bonds based upon their bearing a different rate of interest than specified in the advertisement. The purpose of advertising bonds for sale is to invite the public generally to enter into competition for the purchase of the same and unless the advertisement or invitation to bid permits of free competition among all bidders, it is my opinion that the acceptance of a bid which is not on a strict competitive basis is void.