

In view of the provisions above quoted, it is believed that in case a justice of the peace makes a copy of his docket, it may be regarded "as a copy of a record," to the end that he may charge and collect a fee of ten cents per hundred words from the person for whom the service is rendered.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

1295.

DITCHES—NEW DITCH CODE (108 O. L. 926) ABOLISHED OFFICE OF TOWNSHIP DITCH SUPERVISOR—WHEN TENURE OF INCUMBENTS TERMINATED.

1. *With the becoming effective on October 10, 1919, of the New Ditch Code (108 O. L. 926), the office of township ditch supervisor was abolished and the tenure of incumbents terminated through the repeal of former sections 3386 et seq. G. C. However, by reason of section 26 G. C. proceedings pending on October 10, 1919, under such ditch supervisors, may be carried to a conclusion by them.*

2. *Section 6512 G. C. (section 71 of New Ditch Code), does not authorize the appointment of ditch supervisors.*

COLUMBUS, OHIO, May 28, 1920.

HON. LOUIS H. CAPELLE, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—Your letter of recent date is received, reading:

"Will you kindly furnish this office with an opinion covering the following facts:

At the November election of 1918 a township ditch supervisor was elected in Anderson township, Hamilton county, Ohio, for a term of four years. This ditch supervisor entered into office on January 1, 1919, and has been acting in this capacity up to the present time. The question we desire to put, is whether or not the repeal of section 3386 et seq. of the General Code abolishes the office of township ditch supervisor prior to the time of the expiration of the term for which he has been elected? In other words, can a township ditch supervisor be legislated out of office?

These sections were repealed in Senate Bill 100, as found in 108 Ohio Laws, page 926.

¶The next question is that if the office of township ditch supervisor is abolished prior to the expiration of the term for which such supervisor was elected, can an appointment be made under section 6512, which is section 71 of Senate Bill No. 100, as found in 108 Ohio Laws, page 960, to cover the duties of such ditch supervisor?"

Said sections 3386 G. C. et seq., repealed by the New Ditch Code as of October 10, 1919, (108 O. L. 926), provided in brief that in any township in which county or township ditches have been located and established, "there may be elected a township ditch supervisor, who shall serve for a term of four years" (section 3386), and that (section 3389)

"The township ditch supervisor shall have the supervision of all township and county ditches in his township. He shall clean them out and keep

them in repair as provided by law and shall perform such other duties as are imposed upon him by law."

Since the New Ditch Code does not contain a saving clause as to ditch supervisors, the general rule as applied by our supreme court in *State ex rel. Attorney-General*, 57 O. S. 415 (first syllabus) is in point:

"1. An *office* created by an ordinance is abolished by the repeal of the ordinance, and the incumbent thereby *ceases to be an officer*;"

with the result that it must be held that the office of township ditch supervisor was abolished, and the tenure of incumbents terminated, as of October 10, 1919.

This general statement, however, must be read in the light of section 26 G. C., providing, in substance, that pending proceedings are not affected by amendment or repeal of statute. The operation of said section 26 as to certain ditch proceedings pending on October 10, 1919, was dealt with in an opinion (No. 766) of this department of date November 8, 1919, now found in *Opinions of Attorney-General, 1919*, Vol. II, p. 1416, copy of which opinion is enclosed.

You also inquire whether section 6512 (appearing as section 71 of the New Ditch Code), permits of the appointment of a township ditch supervisor. Said section reads:

"In the performance of his duties as drainage commissioner, the superintendent of public works shall employ any necessary office assistants, who in addition to any salary or compensation received shall be entitled to receive their actual necessary expenses incurred in the performance of any duty. The compensation of any assistant employed by the drainage commissioner shall be such as the general assembly may provide."

This section must, of course, be construed in relation to other sections prescribing the duties of the superintendent of public works as *ex-officio* drainage commissioner. Those duties form a very small part in the scheme of administration provided by the New Ditch Code; and generally speaking (see section 6513) are advisory in their nature. On the other hand, matters of local administration, including location and establishment of ditches (section 6443, et seq.), as well as cleaning, repair and replacement (section 6505, et seq.) are left to the county commissioners and county surveyor, saving that where the board of county commissioners is a petitioner, the proceedings are conducted in the court of common pleas.

It therefore follows that said section 71, either from the standpoint of its express terms, or considered in its context, does not furnish authority for the appointment of a ditch supervisor.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*