

tions 9593 et seq. G. C. are not empowered to insure property generally, but may only insure the property therein authorized."

It is clear that the purposes of said association only include the insurance of the risks specified in Section 9593, General Code, against loss solely resulting from the contingencies as set forth in said section of the General Code. It is provided in Section 9594, subsection 3, in part that "The kinds of property proposed to be insured and the casualties specified in such preceding section proposed to be insured against, also must be specified in such certificate."

6. The names of R. G. Gallemore and E. L. Couzens, as signed and as are written in the acknowledgment of said proposed certificate, do not correspond as will be clearly apparent upon inspection. The notary public taking the acknowledgment should make the necessary correction therein. Vol. I, Opinions of the Attorney General for 1919, p. 18.

7. It should further be observed that the proposed certificate of incorporation does not provide that it shall be one of the purposes of said association to enforce any contract entered into by the association, whereby the members agree to be assessed specifically for incidental purposes and for the payment of losses occurring to such members as required by Section 9594, subsection 3 of the General Code. Opinions of Attorney General, Vol. I, 1912, p. 19; Vol. I, 1914, p. 965; Vol. II, 1914, p. 1679; Vol. I, 1915, p. 904; Vol. II, 1920, p. 1013.

I accordingly advise that you should not file the proposed certificate of incorporation until corrections are made as above suggested.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3009.

APPROVAL, BONDS OF MARSHALL TOWNSHIP RURAL SCHOOL DISTRICT, HIGHLAND COUNTY, OHIO—\$18,000.00.

COLUMBUS, OHIO, February 28, 1931.

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

3010.

SPECIAL ELECTION—APPOINTMENT OF JUDGES AND CLERKS IN VARIOUS PRECINCTS—BOARD OF ELECTIONS WITHOUT AUTHORITY TO MAKE SUCH APPOINTMENTS WITHOUT COMPENSATION.

**SYLLABUS:**

*A board of elections is not authorized to appoint judges and clerks of elections to serve for a specific election without compensation.*

COLUMBUS, OHIO, February 28, 1931.

HON. CALVIN CRAWFORD, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—I am in receipt of a letter from one of your assistants which is as follows:

"The City of Oakwood, which is contiguous to the City of Dayton, desires to have a special election to vote upon the question of adopting a city manager form of government, and the local board of elections for Montgomery County has asked this office for an opinion on the legality of a special election if the said special election is conducted by volunteer precinct workers who are appointed by the county board of elections.

A letter from the local board of elections to this office is as follows:

'Mr. A. C. B., City Clerk, Oakwood, has today filed with the board of elections thirty-nine (39) petitions, containing seven hundred forty-one (741) signatures, praying for the submission to the electors of said municipality the question of adoption of the city manager form of government, as provided under Sections 3515-19 to 3515-28, inclusive.

Of necessity, this will entail a special election, and the question of the expense thereof has been raised.

Mr. B. sets out the fact that it will be possible to maintain a minimum expense in connection therewith by reason of volunteer precinct election officials, all residents of said municipality.

Your opinion in this direction as to the legality of such precinct election officials functioning, in lieu of the regularly appointed election officials, is solicited.'

The writer has consulted General Code 4785-13 and also 4785-25 and 4785-26, and feels that although the present precinct judges and clerks are appointed by the board of elections for one year, that there may be some plan evolved whereby the present officials may temporarily resign. The volunteer workers would then be appointed, who would serve at the special election, and who, if necessary, would sign waivers for any compensation. Then, after the special election, they could resign and the regularly appointed officials could be reinstated.

This question is important locally because it may affect the validity of the election, and because of the scarcity of opinions or decisions on the question, this office would appreciate your opinion as to the legality of said election, if conducted by *volunteer* workers, and also to the practicability and legality of the suggestion made by the writer for receiving the resignations of the regular officials, with the temporary appointment of volunteer workers, and the reinstatement after the special election of the regular precinct officials.

Under Section 3515-1 of the General Code, the city council has thirty days to provide for submitting such question at a special election. Already two or three days of said thirty days have expired, so your early opinion will be appreciated in order that it may be available before the end of the thirty days."

Section 3515-1, General Code, provides for the holding of a special municipal election for the purpose of voting on the question of the adoption of a city man-

ager plan of government, being one of the plans provided in Title 12, Division 1, Chapter 1-1, General Code. This section reads as follows:

"Whenever electors of any municipality, equal in number to ten per centum of those who voted at the last regular municipal election, shall file a petition with the board of deputy state supervisors of elections or board of deputy state supervisors and inspectors of election, as the case may be, of the county in which such municipality is situated, asking that the question of organizing the municipality under any one of the plans of government provided in this act be submitted to the electors thereof, said board shall at once certify that fact to the council of the municipality and the council shall, within thirty days, provide for submitting such question at a special election to be held not less than sixty nor more than ninety days after the filing of such petition. Any such election shall be conducted in accordance with the general election laws of the state except as otherwise provided in this act and the council of any municipality holding such an election shall appropriate whatever money may be necessary for the proper conduct thereof."

The foregoing chapter comprises an act adopted by the legislature in 1913 to provide optional plans for municipalities and permitting the adoption thereof by popular vote. 103 O. L. 767. There are no provisions therein as to what precinct officials shall preside at the special election provided in Section 3515-1, supra, and therefore under the express terms of that section the election in question must be conducted by the election officials provided in the general "election laws of the State of Ohio," as enacted by the 88th General Assembly. Your question accordingly resolves itself into one of whether or not at any election the duly appointed precinct judges and clerks may be supplanted by persons appointed for a given election in consideration of their serving without compensation.

Provisions for the appointment of judges and clerks of elections and their term of office are contained in Section 4785-25, General Code, as follows:

"On or before the first day of September before each November election the board by a majority vote shall, after careful examination and investigation as to their qualifications, appoint for each election precinct six competent persons, four as judges and two as clerks, who shall constitute the election officers of such precinct. Not more than two of the judges and one of the clerks shall be members of the same political party. The term of such precinct officers shall be for one year, but subject to removal at any time by the board. Vacancies for unexpired terms shall be filled by the board. When new precincts have been created the board shall appoint judges and clerks for such precincts for the unexpired term. Any judge or clerk may be summarily removed from office at any time by the board for neglect of duty, malfeasance or misconduct in office."

Section 4785-26, to which you refer, provides:

"All judges and clerks shall be qualified electors. No person who has been convicted of a crime, or who is unable to read and write the English language readily, or who is a candidate for an office to be voted for by the voters of his precinct in which he is to serve, except the office of delegate or alternate to a convention or a member of a party

committee, shall serve as an election officer. A person when appointed as an election officer shall receive from the board a certificate of appointment which may be revoked at any time by the board. Such certificate shall be in such form as the board may prescribe and shall specify the precinct, ward or district in and for which the person to whom it is issued is appointed to serve, the date of appointment, and the expiration of his term of service."

Obviously, clerks and judges of elections are public officers within the full meaning of the term. They are employed on behalf of the government in a position of public trust and the legislature has expressly recognized in providing for their term of office and for the issuance to them of a certificate of appointment, the fact that their employment is not transient, occasional or incidental.

In the early case of *State, ex rel. Attorney General v. Kennon, et al.*, 7 O. S. 547, the Supreme Court, speaking through Judge Brinkerhoff at p. 556 discussed what constitutes a person a public officer:

"What is an office? Among lexicographers, Webster defines the word to signify 'a particular duty, charge, or trust conferred by public authority and for a public purpose.' In a case in 20 Johns. 492, Platt, J.; delivering the opinion of the court, defines the legal meaning of the word to be, 'an employment on behalf of the government, in any station or public trust, not merely transient, occasional, or incidental.'

If we accept either or both of these definitions as substantially correct, it is clear to our minds, that if these statutes are held valid, these defendants are officers. *Theirs is a public duty, charge, and trust, conferred by public authority, for public purposes of a very weighty and important character.* Their duties, their charge and trust, are not transient, occasional, or incidental, but durable, permanent, and continuous."

Without respect to the fact that the proposed appointment of judges and clerks of election for a specific election is to be made in consideration of their serving without compensation, I should be inclined to the view that the appointment of such persons for one specific election rather than for the term contemplated by the legislature would be unauthorized and therefore invalid. Since it is proposed, however, to appoint these officials for a specific election in consideration of their serving without compensation, this element of the proposed procedure should be commented upon. In my view the proposed plan in this respect amounts to nothing more nor less than an assignment to the municipality of the salary to become due a public officer before such salary is earned. Such an agreement is, in my opinion, clearly contrary to public policy and void. The leading case on this subject is *Bliss v. Lawrence*, 58 N. Y., 442, wherein the court said:

"The controlling question in these cases is that of the lawfulness of an assignment, by way of anticipation, of the salary to become due a public officer. \* \* \* Salaries are, by law, payable after work is performed and not before, and while this remains the law it must be presumed to be a wise regulation and necessary, in the view of the law-makers, to the efficiency of the public service. The contrary rule would permit the public service to be undermined by the assignment to strangers of all the funds appropriated to salaries. It is true that, in respect to officers removable at will, this evil could in some measure be limited

by their removal when they were found assigning their salaries; but this is only a partial remedy for there would still be no means of preventing the continued recurrence of the same difficulty. If such assignments are allowed then the assignees, by notice to the government, would on ordinary principles be entitled to receive pay directly and to take the place of their assignors in respect to the emoluments, leaving the duties as a barren charge to be borne by the assignors. It does not need much reflection or observation to understand that such a condition of things could not fail to produce results disastrous to the efficiency of the public service. \* \* \* The substance of it all is, the necessity of maintaining the efficiency of the public service by seeing to it that public salaries really go to those who perform the public service. To this extent, we think, the public policy of every country must go to secure the end in view."

This doctrine has been followed in Ohio. *Serrill v. Wilder*, 77 O. S., 343.

A consideration of your inquiry raises numerous questions of government as well as public policy. It is the American theory of government that the public trust should not be lodged exclusively in those of means,—hence provision is generally made for reasonable compensation to be paid to public officials in order that the public service may be open to all citizens, regardless of their financial status. There is no public trust of greater importance in a democracy than that exercised by the election officials at a public election. I am therefore clearly of the view that the proposed plan of sweeping aside the orderly process of conducting an election is not only unauthorized but governmentally unsound.

As to the validity of the election so conducted, numerous contentions could be made. It might be urged that the precinct officials were, notwithstanding the fact that their appointment had been unauthorized, *de facto* officers. There is, of course, the possibility that a purely local election, otherwise properly conducted, would be held by the courts to be valid. However, it is not the province of the Attorney General to advise as to the outcome of such litigation when such advice must be predicated upon a recognition of an unauthorized course of procedure.

In view of the foregoing, it is my opinion that a board of elections is not authorized to appoint judges and clerks of elections to serve for a specific election without compensation.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3011.

APPROVAL, BOND FOR FAITHFUL PERFORMANCE OF HIS DUTIES  
AS RESIDENT DISTRICT DEPUTY DIRECTOR—GUY M. CART-  
WRIGHT.

COLUMBUS, OHIO, March 2, 1931.

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

DEAR SIR:—You have submitted a bond in the penal sum of \$5,000.00 with