

appropriate, and which are plainly adapted to that end, and which are not prohibited, but consistent with the letter and spirit of the constitution and statutes, are lawful."

You will observe that the court recognizes the inherent right of courts to make reasonable rules, subject, however, to the qualification that such rules shall not be in conflict with general laws. If, therefore, the court in this instance has made a rule requiring the payment of \$1.35 as advanced costs in every instance, the application of such rule to the state would, in my opinion, be in conflict with Section 348 of the General Code. In so far as the rule, if there be one, and the statute just referred to are in conflict, the statute must control.

I am, therefore, of the opinion that there is no authority to require the payment of advanced costs in an action instituted by the State of Ohio.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

---

1577.

ELECTION—CANDIDATE SERVING AS JUDGE OR CLERK OF ELECTIONS—INELIGIBLE TO OFFICE—FILLING OF VACANCY IN BOARD OF EDUCATION OF VILLAGE OR RURAL SCHOOL DISTRICT.

*SYLLABUS:*

1. *A candidate, who serves as a judge or clerk of elections of any precinct of a school district, when an election is being held for member of the board of education for the district, is ineligible to the office of member of such board of education, although he receives sufficient votes to elect him.*

2. *When a vacancy occurs in the board of education of a village or rural school district, said vacancy should be filled by a majority vote of the remaining members of said board of education, by election for the unexpired term. If said board fails to fill such vacancy for a period of thirty days after the same occurs, it becomes the duty of the county board of education, of the district of which the local district is a part, to fill such vacancy.*

COLUMBUS, OHIO, January 14, 1928.

HON. H. E. CULBERTSON, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication requesting my opinion as follows:

"Who appoints the fifth member of a school board in case of a hopeless tie?"

Is such a vacancy created when a member of a local election board is a candidate for school board with his name on the ballot printed, if the other precincts in the district cast enough votes to elect without the vote of that precinct?

In this case the party filed no expense account and did not try to qualify. Can he do so now? If so the first question is answered."

It appears that in one of the local school districts in your county the candidate for member of the board of education who received sufficient votes to be elected served at the election, either as a judge or clerk of elections in one of the voting precincts of the district. Thereafter, he neglected to file an expense account, and made no attempt to qualify for the position of member of the board of education, thereby causing a vacancy in the board for the filling of which the local board is deadlocked and the vacancy has for that reason not been filled.

You inquire whether or not under the circumstances, the candidate in question can now file his expense account and qualify for the office, thereby taking care of the situation so that there would be no vacancy in the membership of the board of education.

In this connection, I direct your attention to Section 5092, General Code, which reads as follows :

“No person, being a candidate for an office to be filled at an election, other than for committeeman (committeeman) or delegate or alternate to any convention, shall serve as deputy state supervisor or clerk thereof, or as a judge or clerk of elections, in any precinct at such election. A person serving as deputy state supervisor or clerk thereof, judge or clerk of elections contrary to this section shall be ineligible to any office to which he may be elected at such election.”

It will be observed that the aforesaid section of the Code is directly applicable to your situation. It is clear that inasmuch as the person about whom you inquire served as a judge or clerk of elections in a precinct in the district in which he was a candidate for office, he is ineligible for the office. The fact that there were sufficient votes to elect him in the precincts of the district, other than the one in which he served as an election official, can make no difference.

This question was considered in a former opinion of this department reported in the Opinions of the Attorney General for 1918, page 74, in which it was held :

“A person who served as a judge of elections is ineligible to office of member of the board of education, for which position he received sufficient votes to elect him at the last election.”

It therefore appears that a vacancy does exist in the board of education to which you refer. This vacancy should be filled in accordance with Section 4748, General Code, which reads in part, as follows :

“A vacancy in any board of education \* \* \* shall be filled by the board at its next regular or special meeting, or as soon thereafter as possible, by election for the unexpired term. A majority vote of all the remaining members of the board may fill any such vacancy.”

If, however, the board is deadlocked, and for that reason is unable to fill the vacancy, and this condition continues for a period of thirty days, it becomes the duty of the county board of education to fill the vacancy. Section 7610-7, General Code, provides in part, as follows :

“If the board of education in a district under the supervision of the county board of education fails to provide sufficient school privileges \* \* \* or to fill any vacancies in the board within the period of thirty days after such vacancies occur, the county board of education of the county to which such dis-

trict belongs, upon being advised and satisfied thereof, shall perform any and all such duties or acts, in the same manner as the board of education by this title is authorized to perform them. \* \* \* "

I am, therefore, of the opinion that a vacancy exists in the board of education concerned in your inquiry, by reason of the fact that the candidate about whom you inquire is ineligible to fill the office, and that if such vacancy is not filled by the local board of education within thirty days it becomes the duty of the county board of education of the county district, of which the local district is a part, to fill said vacancy.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

---

1578.

DEPOSITORY BOND—TOWNSHIP TRUSTEES MAY ACCEPT SECURITIES ENUMERATED IN SECTION 4295, GENERAL CODE, IN LIEU THEREOF.

*SYLLABUS:*

*Township trustees may accept from a depository of township funds in lieu of a depository bond the securities enumerated in Section 4295 of the General Code, subject to the conditions and limitations in said section contained.*

COLUMBUS, OHIO, January 14, 1928.

HON. R. L. THOMAS, *Prosecuting Attorney, Youngstown, Ohio.*

DEAR SIR:—This will acknowledge your letter of January 11, 1928, as follows:

"May the township trustees under Section 3324, General Code, accept the same security for depository bonds as the county commissioners by authority of Section 2732?"

The township depository law is comprehended within Sections 3320 to 3326, inclusive, of the General Code. There is no authority therein for the acceptance of any security for township funds other than a "good and sufficient bond."

You inquire whether or not the township trustees may accept the same security, for depository bonds, as the county commissioners, by authority of Section 2732, General Code. I assume that you inquire whether or not the trustees may accept such securities as the county commissioners are authorized to accept by Section 2732 of the Code in lieu of a depository bond.

By reference to the section just mentioned, and to the sections heretofore referred to relating to the deposit of township funds, there is found no appropriate language from which it may be said that either section is in any way connected with the other. Your specific question must, therefore, be answered in the negative.

I desire, however, to call your attention to the provisions of Section 4295 of the General Code, which, along with Section 2732, was amended in House Bill No. 388 of the 87th General Assembly to read as follows:

"The council may provide by ordinance for the deposit of all public monies coming into the hands of the treasurer, in such bank or banks, situ-