

2157.

COUNTY AUDITOR—TERM EXTENDED—NOT NECESSARY TO OBTAIN
NEW COMMISSION OR GIVE NEW BOND.

Under the provisions of section 2558 G. C., as amended in 108 O. L., Part II, p. 1294, which extended the terms of county auditors, it will not be necessary for the present incumbents to obtain a new commission from the governor or to give a new bond to cover the period for which said terms are extended.

COLUMBUS, OHIO, June 9, 1921.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your recent communication, requesting my written opinion, reads as follows:

“Section 3 of Senate Bill No. 221 (108 O. L. Part II, p. 1294), extends the existing terms of county auditors from the third Monday of October, 1921, to the second Monday of March, 1923.

QUESTION: Will county auditors be required to procure commissions from the governor for this period of extension, and will they have to give new bond for the same period?”

It is a well settled rule in this state that the legislature may extend the term of county officers, provided the extension does not provide for an official holding a term beyond the constitutional limitations, if any, relating thereto. See *State ex rel. vs. Brewster*, 44 O. S. 589.

Section 2 of article XVII of the Ohio Constitution, as last amended, provides that the county auditor shall be elected for a term not to exceed four years. The “present existing terms” referred to in section 2558 of the amended act to which you refer were filled at the November election held in November, 1918, under the provisions of said section before amendment. As said section read at that time, the term of office of the county auditors elected in 1918 was two years, beginning on the third Monday in October in 1919. Therefore, it will be seen that the extension provided for in the act under consideration does not conflict with the provisions of the constitution. In other words, the two year term, plus the extension, is less than four years.

Section 8 of the General Code provides:

“A person holding an office of public trust shall continue therein until his successor is elected or appointed and qualified, unless otherwise provided in the constitution or laws.”

It is well settled in Ohio that when an officer holds over beyond the term for which he is elected, in pursuance to the provisions of law or the constitution, the additional tenure becomes a part of the original term. See *State ex rel. Metcalfe*, 80 O. S. 244. Therefore it will be seen that by the operation of law the term that was begun by the present incumbents legally terminates on the second Monday of March, 1923.

Section 138 G. C. provides:

“A judge of a court of record, state officer, county officer, militia officer and justice of the peace, shall be ineligible to perform any duty pertaining to his office, until he presents to the proper officer or au-

thority a legal certificate of his election or appointment, and receives from the governor a commission to fill such office."

In view of the foregoing discussion, it is evident that the commission given to the county auditors to cover the terms for which they were elected in 1918 will be sufficient, for, as has been said, the whole period which the auditors are authorized to serve by reason of said election and extension, constitutes but one term. If this were not true, then it necessarily follows that there would be a vacancy at the end of the two year period which the commissioners of the county would be required to fill, but as heretofore indicated, no such results obtain under the circumstances you present. The present auditors having once received a commission, it is not believed that section 138 G. C., supra, is further applicable to their holding over in pursuance to law.

Considering your further query, relative to the bonds, it is essential to consider section 2559 G. C., which provides :

"Before entering upon the discharge of the duties of his office, the county auditor shall give bond to the state in a sum not less than five thousand dollars nor more than twenty thousand dollars, as the commissioners require, with two or more sureties, approved by the commissioners of the county, conditioned for the faithful discharge of the duties of his office. Such bond, with the oath of office and the approval of the commissioners endorsed thereon, shall be deposited by them with the county treasurer, who shall record and carefully preserve it."

Section 6 of the General Code provides :

"A bond payable to the state of Ohio, or other payee as may be directed by law, reciting the election or appointment of a person to an office or public trust under or in pursuance of the constitution or laws, and conditioned for the faithful performance, by such person, of the duties of the office or trust, shall be sufficient, notwithstanding any special provision made by law for the condition of such bond."

The same reasoning applied in reaching the conclusion relative to the governor's commission is equally apropos in connection with your second inquiry relative to the bond. The statute requires that the bond shall be given for "the faithful performance of the duties of the office." Undoubtedly if the bond were accepted by the commissioners it would contain such a provision.

In the case of Dawson vs. State, 38 O. S. 1, it was held :

"An official bond conditioned for the faithful discharge of the duties of an office 'according to law' embraces duties required by laws in force during the term of the officer, whether enacted before or after the execution of the bond. King vs. Nichols, 16 O. S. 80, approved."

If the position heretofore taken is sound relative to the time during which the auditors are permitted to hold over, attaching to and becoming a part of the regular term for which they were elected, then it will be seen that the bond given before entering upon the term would be in effect for the whole period. This must necessarily be true, because a bond could not be sufficient

which covered only a part of the term. It is evident that those entering into the bond are bound to have knowledge as to the authority of the legislature to extend the term in pursuance to law.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2158.

TAXES AND TAXATION—DEPUTY ASSESSORS UNDER SECTION 5548 G. C. CAN BE PAID OUT OF COUNTY TREASURY—OFFICES COMPATIBLE—MAYOR OF MUNICIPALITY OR TOWNSHIP TRUSTEE AND DEPUTY ASSESSOR.

Deputy assessors under General Code section 5548 can be paid out of the county treasury.

The office of mayor or a municipality or township trustee and deputy assessor are compatible.

COLUMBUS, OHIO, June 9, 1921.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date received in which you request the opinion of this department, as follows:

“Under our present system of appraising property for taxation, where the county auditor permits the citizens of a municipality or township to select the board of appraisers to assist him in arriving at values, and the people select the mayor of a municipality or the trustee of a township on said board:

Question 1. Can such officers be paid from the county treasury for such service

Question 2. Are such positions compatible?”

General Code section 5548 provides in part as follows:

“The county auditor, is empowered to appoint and employ such experts, deputies, and clerks, or other employes, as he may deem necessary to the performance of such duties as such assessor; the amount to be expended in the payment of their compensation to be fixed and determined by the county commissioners. If, in the opinion of the county auditor the county commissioners shall fail to provide a sufficient amount for their compensation, he may make application to the tax commission of Ohio for an additional allowance, and the additional amount of compensation allowed by such commission, if any, shall be duly certified to the board of county commissioners, and the same shall be final; provided, however, that if the assessment is ordered by the tax commission of Ohio such commission shall in such order prescribe the number of experts, deputies, clerks or employes to be appointed by the county auditor for the purpose of making such assessment, and fix their compensation. The salaries and compensation of such experts, deputies, clerks and employes shall be paid, upon the warrant of the auditor, out of the general fund of the county; and in case the same are, in whole or in part,