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COUNTY COMMISSIONERS—ACTING PRESIDENT OF BOARD IS THE PERSON AUTHORIZED TO ACT AS MEMBER OF THE COUNTY BOARD OF REVISION.

SYLLABUS:

The member of the board of county commissioners authorized to act as a member of the county board of revision is the present elected, qualified and acting president of the board of county commissioners.

COLUMBUS, OHIO, March 1, 1927.

HON. OTTO J. BOESEL, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication in which you state:

“A re-appraisal was ordered for the real estate located in Auglaize county, Ohio, in 1925, and owing to the time necessary to complete the same, is carried over into the year 1926, and the treasurer of our county will be ready to make collections of taxes under the new valuations about the 15th day of March.

The statute provides that the board of revision comprised of the county auditor, the county treasurer, and the president of the board of county commissioners shall constitute a board of revision to hear complaints based on said valuations.

In view of the fact that this is the 1925 appraisalment, I will be pleased to have your opinion as to the personnel of the president of the board of county commissioners.

The president of the board of county commissioners serving for the year 1925 does no longer serve in that capacity, a new member of the board now serving as president of the board of county commissioners.

In the event complaints are filed and submitted to the board of revision at this time, does the present president of the board of county commissioners serve as a member of the board of revision or does the member of the county board of commissioners who was the president of the board in 1925, at the time the re-appraisalment was ordered, serve as a member of the board of revision?”

Section 5580 of the General Code provides as follows:

“The county treasurer, county auditor, and the president of the board of county commissioners shall constitute a county board of revision.”

It is noted that this section provides that one member of the county board of revision shall be the president of the board of county commissioners.

It is further noted that the county board of revision is composed of county officials. Your letter does not inform me as to whether or not the ex-president of the board of county commissioners is now a member of said board, or whether the new member you mention has taken his place as a member of the board of county commissioners. If said ex-president is not at the present time a member of the board of county commissioners he may not serve as a member of the county board of revision because he is not a county officer.

In the case of *State, ex rel. Pogue vs. Groom*, 91 Ohio St., 1, the fourth paragraph of the syllabus reads as follows:

"The general assembly has the authority to create new duties and require such duties to be performed by the incumbents of an existing office, but where the duties so created are in their nature and extent county official duties, they must be attached to a county office and must be required to be performed by a county officer duly elected by the electors of the county, or lawfully appointed to fill a vacancy in that office."

It is evident that an ex-county commissioner is not a county official and has no county official duties to perform. The president of the board of county commissioners must necessarily be a county commissioner serving a term for which he was duly elected, or a portion of a term to which he has been lawfully appointed to fill a vacancy in that office. As Section 5580 provides that the president of the board of county commissioners is a member of the county board of revision, it is apparent that one who is not a county commissioner may not be president of the board of county commissioners, and therefore may not be a member of the county board of revision.

In the case of *State, ex rel., vs. O'Brien*, 95 Ohio St., 166, at page 173, the court say:

"This court however, in the more recent case of *State, ex rel. Pogue vs. Groom*, 91 Ohio St., 1, held that members of the county budget commission are county officers. It is impossible to distinguish between members of the county budget commission and members of the county board of revision, unless, perhaps, it would the more clearly appear that the latter are county officers within the meaning of Section 1 of Article X of the Constitution of Ohio."

Section 1, Article X of the Constitution reads:

"The general assembly shall provide, by law, for the election of such county and township officers as may be necessary."

The ex-president of the board of county commissioners, not being at this time a county official, may not serve as a member of the county board of revision; or if the fact is that said ex-president of the board of county commissioners is still serving as a member of the board of county commissioners, it nevertheless follows that he may not serve as a member of the county board of revision.

Section 2400, General Code, as amended 111 O. L., 18, reads as follows:

"The board of county commissioners shall organize on the first Monday of January of each year, by the election of one of its members as president for a term of one year. The member so elected shall preside at all regular and special sessions thereof. If the position of president becomes vacant during the year, the board shall select one of its members to preside."

Under the provisions of this section a president of the board of county commissioners is elected annually on the first Monday of January, and it is possible that a different person may be elected each year; but Section 5580 provides that the president of the board of county commissioners shall be a member of the county board of revision.

It therefore follows that the member of the county board of revision must not

only be a member of the board of county commissioners, but must in addition thereto be the president of the board of county commissioners.

You are therefore advised that it is my opinion that the member of the board of county commissioners authorized to act as a member of the county board of revision is the present elected, qualified and acting president of the board of county commissioners.

And I here reaffirm the holding made in Opinion No. 27, dated January 26, 1927, as follows:

Under the provisions of Section 5580 G. C., and Section 5592 G. C., when a president of the board of county commissioners ceases to be such president, his office as a member of the county board of revision also ceases, and upon the election of a new president of the board of county commissioners, he thereby becomes, *ipso facto*, a member of the county board of revision.

Respectfully,

EDWARD C. TURNER.

Attorney General.

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WITNESS FEES—WHEN WITNESS FROM WITHIN THE STATE VOLUNTARILY REPORTS—FROM WITHOUT STATE—PAYMENT OF FEES UNDER SECTION 3004, GENERAL CODE.

SYLLABUS:

1. *Where a witness voluntarily reports to the court upon notice to do so and there receives a subpoena, under such circumstances he is entitled to his statutory fees and mileage only when his attendance could have been required by compulsory process.*

2. *There being no jurisdiction to compel a witness who is without the State of Ohio to appear in a court of this state to testify in a criminal case, such witness, who voluntarily reports to the court at the request of the prosecuting attorney, and is there subpoenaed, is entitled to one dollar and no more.*

3. *The prosecuting attorney may in his discretion pay such witness an amount equal to the mileage out of funds in his hands by virtue of Section 3004, General Code, such item being one of expense in furtherance of justice.*

COLUMBUS, OHIO, March 1, 1927.

HON. CHARLES B. COOK, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—I am in receipt of your letter of February 5, 1927, which reads as follows:

“We have the following situation: In a first degree murder case, a witness was located outside of the state. He was interviewed and at our request, reported at court for service.

Under Section 3014, we requested our clerk of courts to issue a voucher for one day’s attendance and for mileage from our state line that he traveled when coming to court to report as per my request. This the clerk refused to do, but issued a voucher for one day’s attendance. Our contention is that he was entitled to one day’s attendance and mileage.

Will you kindly advise as to correct procedure in this matter?”