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507.07 RC—IN RE ANNUAL STATEMENTS OF RECEIPTS AND EXPENDITURES; RENDERED OBSOLETE AND WITHOUT OPERATIVE EFFECT BY REASON OF CHANGES IN TOWNSHIP AND SCHOOL LAWS—REPEALED BY IMPLICATION—117.06 RC—3319.29 RC—3313.31 RC.

SYLLABUS:

Section 507.07, Revised Code, which requires a township clerk to prepare an annual statement of the receipts and expenditures of the township and of the board of education of a local school district, has been rendered obsolete and without operative effect by reason of changes made in the township laws and school laws, and may therefore be regarded as repealed by implication.

Columbus, Ohio, February 14, 1957

Hon. Samuel L. Devine, Prosecuting Attorney
Franklin County, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

"I have been requested by one of the township clerks for an opinion as to the interpretation of Section 507.07 of the Revised Code of Ohio, which reads as follows:

"Immediately after the township officers have made their annual settlement of accounts, the township clerk shall make and enter in the record of the proceedings of the board of township trustees, a detailed statement of the receipts and expenditures of the township for the preceding year, the amount of money received and expended for such purposes in each such district in the township, and the receipts and expenditures of the board of education of the local school district. Such clerk shall state from what source the moneys were received, to whom paid, for what expended, and, in detail, all liabilities. On the morning of the first Tuesday after the first Monday in November, each year, the clerk shall post a copy of such statement at each place of holding township elections.

'No township clerk shall refuse or neglect to make, enter, and publish such detailed statement.'

"This section, in almost identical language, has been a part of the township laws of this state since mid 1800.

"I have been advised that the various townships throughout Ohio no longer comply with the provisions of this section and further, that the Bureau of Inspection and Supervision of Public Offices has not, for many years, sought to enforce the provisions of this section. It is my understanding the Bureau of Inspection considers that Section 117.06, Revised Code, which in essence requires a similar report to be filed with the Bureau of Inspection would, by implication, repeal Section 507.07, Revised Code.

"There is little doubt that the provisions of Section 507.07, Revised Code, impose a mandatory duty upon the clerk of a township, under penalty of law, to carry out the duties set forth in such section. It is also apparent that the contents of the report required by the above quoted section are almost identical to those required by Section 117.06, Revised Code, which read as follows:

" 'A financial report of each public institution or taxing dis-

trict for each fiscal year shall be made in accordance with forms prescribed by the chief inspector and supervisor of public offices.

‘The report shall be certified by the proper officer or board, filed with the bureau of inspection and supervision of public offices within thirty days after the close of the fiscal year, and contain the following:

‘(A) Amount of collections and receipts, and accounts due from each source;

‘(B) Amount of expenditures for each purpose;

‘(C) Income of each public service industry owned or operated by a municipal corporation, and the cost of such ownership or operation;

‘(D) Amount of public debt of each taxing district; the purpose for which each item of such debt was created, and the provision made for the payment thereof. Each county auditor shall receive fifty dollars for his services in making such report, to be paid out of the county treasury upon the allowance of the board of county commissioners and to be credited to said auditor’s fee fund.’

“I should like also to point out that it has been many years since the township clerk was also the school clerk. This dual role of the clerk was the law when the predecessor to Section 117.06, Revised Code, was first adopted.

“Since this section has remained on the statute books of Ohio for these many years, though apparently not enforced, I feel that its interpretation involves all the townships in Ohio, and is a matter of statewide concern. Therefore, I respectfully request your opinion on the following question:

“Must a township clerk comply with the provisions of Section 507.07, Revised Code, or has such section been repealed by implication of the enactment of Section 117.06, Revised Code?”

Whether or not Section 507.07, Revised Code, was repealed by implication by the enactment of Section 117.06, Revised Code, it is clear from an examination of the history of the former, and from the amendment or repeal of related statutes upon which its effectiveness originally depended, that that section is now obsolete and incapable of being given any operative effect.

On this point we may note initially that the phrase “annual settlement of accounts” in Section 507.07, Revised Code, apparently stems from the provisions of Section 15, of the Township Act of 1853, 51 Ohio Laws,

492, which required the township trustees to *settle the accounts* of the supervisor of highways and the township treasurer, and examine and settle all demands and accounts against the township for which purpose the trustees, supervisors, treasurer, and township clerk were required to meet on the first Monday of March, annually, and the township clerk was required to make an entry and true statement of all accounts allowed and adjusted by the trustees in a book to be provided for such purpose.

This statute was not carried into the later revisions of the code and the duty of township trustees to prepare the annual financial statement of the township trustees on the first Monday of March has therefore ceased to be operative and may now be regarded as obsolete. It logically follows that where no action is taken by the trustees with respect to such matter the duty of the township clerk with respect to the posting of the statement as required by Section 507.07, *supra*, becomes impossible of performance, since the statute requires him to do so only "immediately after the township officers have made their annual settlement of accounts."

The situation is equally true with respect to the duty of the township clerk to prepare a statement of the receipts and disbursements of the board of education of the local school district. Due to the amendments of the school code whereby the one-room school district has been replaced by the centralization and consolidation of school districts, any number of townships may now be encompassed within one school district. Under this reorganization the township clerk no longer has access to the records of school affairs and would thus find it impossible to compile such report. That duty, under the school code, now devolves upon the clerk of the board of education. On this point we may note that Section 3319.29, Revised Code, reads in part:

"The clerk of each board of education shall keep an account of all school funds of the district upon such forms as are prescribed and approved by the bureau of inspection and supervision of public offices * * * Shall render a statement to the board, monthly or more often if required, showing the revenues and receipts from whatever sources derived, the various appropriations made by the board, the expenditures and disbursements therefrom, the purposes thereof, the balance remaining in each appropriation, and the assets and liabilities of the school district."

Section 3313.31, Revised Code, similarly provides:

"All the duties and obligations of the county auditor, county treasurer, or other officer or person relating to the moneys of a

school district shall be complied with by dealing with the clerk of the board of education.”

Manifestly, under these provisions the duty of preparing a financial statement in behalf of the school district rests with the clerk of the board of education and not with the township clerk; and this leads surely to the conclusion that in this respect also, Section 507.07, Revised Code, is so far obsolete that it may be regarded as repealed by implication.

Accordingly, it is my opinion that Section 507.07, Revised Code, which requires a township clerk to prepare an annual statement of the receipts and expenditures of the township and of the board of education of a local school district, has been rendered obsolete and without operative effect by reason of changes made in the township laws and school laws, and may therefore be regarded as repealed by implication.

Respectfully,

WILLIAM SAXBE

Attorney General