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1. TOWNSHIP TRUSTEE—NOT A FULL TIME SALARIED OFFICE OR POSITION—SECTIONS 4615-9, 4628 G.C.
2. TO HOLD POSITION OF TOWNSHIP TRUSTEE DOES NOT DISQUALIFY HOLDER FROM CONTINUING TO RECEIVE A PENSION OR DISABILITY ALLOWANCE.

SYLLABUS:

1. The office of township trustee is not a full time salaried office or position within the purview of Sections 4615-9 or 4628, General Code.
2. The fact that a person is holding the position of township trustee does not disqualify him from continuing to receive a pension or disability allowance under the provisions of Sections 4615-9 or 4628, General Code.

Columbus, Ohio, January 29, 1952

Hon. Seabury H. Ford, Prosecuting Attorney
Portage County, Ravenna, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Board of Trustees of F. Township in this county have requested an opinion from me as to whether a man retired from the K. City Fire Department August 1, 1948, could be appointed or elected trustee of F. Township and still receive his pension benefits now being paid from the K. City Firemen’s Pension Fund.

“This, of course, comes under G.C. 4628 as amended October 27, 1949, the last paragraph of which prohibits such person from holding an ‘elective or appointive full time salaried office in the service of the State or any political subdivision.’ I have also read Attorney General Opinions No. 2641, 1948, and No. 746, 1949. From the above, I would conclude that the question I am asking you to render an opinion upon is:

“Is the elective office of township trustee a full time salaried office or position under the provisions of G.C. 4628?”

Although you refer in your letter to a retired member of the fire department, Section 4628, General Code, to which you also refer, is part of an act passed in 1947 relating to the police relief and pension fund. This section closes with the following paragraph:

“No person shall be entitled to receive pension or disability payments pursuant to the provisions of this section while he is holding an elective or appointive full time salaried office or position in the service of the state or any political subdivision thereof.”

This identical language is also contained in the last paragraph of Section 4615-9, General Code, also enacted in 1947, relating to the firemen’s relief and pension fund. Both of these sections undertake to set out definitely the amount of pension which a member of the fund, after attaining a certain age and having served a certain number of years, shall be entitled to receive, and also certain allowances which he is to receive by reason of disability incurred during his period of service.

Your question, therefore, is whether the office of township trustee is a “full time salaried office or position,” within the meaning of Sections 4615-9 or 4628, General Code. It occurs to me that the question divides itself into two parts: first, whether the position of township trustee is a full time office; and, secondly, whether it is a salaried office.

I have found no definite judicial utterance which will answer the question as to what is and what is not a full time office or position. It might be argued that because a township trustee is, under the law, to be elected for a term of four years, as provided in Section 3628, General Code, and might be subject to call on any day during his entire term, he should, therefore, be regarded as holding a full time office. I do not, however, consider that his election for a term of years is in any degree

the determining factor. We have only to look to the statutes, to find a large number of offices, the duties of which manifestly do not call for full time service and the emoluments of which certainly do not provide a living for the incumbent. Take, for instance, the position of membership on a board of education which is an elective office and which yields no compensation whatever. Or consider the office of village councilman, who, by the provisions of Section 4219, General Code, may receive compensation for his services in a small village of only three dollars for each council meeting, and may not be paid for more than twenty-four meetings in any calendar year. It would be absurd to maintain that these are full time offices.

Turning to the office of township trustee, I observe that under Section 3294, General Code, as amended by the 99th General Assembly, such trustee is to receive \$5.00 per day for time occupied in the business of the township, with a maximum of one hundred days of pay in a township having a budget of less than \$10,000, and a slightly rising scale of days in townships having a larger budget. Manifestly, it was not within the contemplation of the Legislature that a man should devote his entire time for a period of four years to an office paying only a nominal compensation. As a matter of common knowledge, it is known that men holding offices of the character to which I have referred, including township trustees, only devote a small portion of their time to the duties of the office, while carrying on some regular business or occupation as a means of making a living.

Accordingly, it is my opinion that the office of township trustee is not a full time office within the meaning of Sections 4615-9 or 4628, General Code.

The other point involved in your question is whether a township trustee is a salaried officer. Section 3294, General Code, reads in part:

“Each trustee shall be entitled to five dollars for each day of service in the discharge of his duties in relation to partition fences, to be paid in equal proportions by the parties, and five dollars for each day of service in the business of the township, to be paid from the township treasury. * * *”

It will be observed, in the first place, that a portion of this compensation is to be paid by private persons interested in partition fences, and, therefore, could not in any sense be regarded as salary. As to the portion

payable by the township, this compensation is not designated as salary, but is only a per diem compensation for the days worked. The difference between "compensation" and "salary" is discussed in an Opinion No. 978, which I issued on December 4, 1951, relative to the power of the Legislature to increase the per diem compensation of members of the Ohio State Dental Board. This opinion grew out of action of the 99th General Assembly raising such compensation from ten dollars to fifteen dollars for each day actually employed in official duties. That opinion would apply with equal force to the amendment of Section 3294, General Code, increasing the per diem compensation from three dollars and fifty cents to five dollars. The second branch of the syllabus of the opinion just referred to, reads as follows :

"Under the provisions of Article II, Section 20 of the Constitution of Ohio, the Legislature may change the per diem compensation of any officer whose total compensation is based upon such per diem payment and who receives no 'salary' in the sense of an annual or periodical payment for services dependent upon the time and not upon the amount of service rendered."

That opinion quotes the definition of "salary" as given by the Supreme Court in the early case of *Thompson v. Phillips*, 12 Ohio St., 617, as follows :

"An annual or periodical payment for services—a payment dependent on time, and not on the amount of the service rendered."

Other authorities bearing on the distinction between salary and compensation are extensively reviewed in that opinion, and I do not consider it necessary to restate them here. It seems to me to follow without argument that the office of township trustee is not a salaried office.

It is accordingly my opinion, and you are advised that :

1. The office of township trustee is not a full time salaried office or position within the purview of Sections 4615-9 or 4628, General Code.

2. The fact that a person is holding the position of township trustee does not disqualify him from continuing to receive a pension or disability allowance under the provisions of Sections 4615-9 or 4628, General Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General