

roads, and such highways shall *cease to be main market roads* and shall become and remain inter-county highways and *be improved as such.*"

While this language is imperative in form, yet it must be construed in the light of section 26 G. C., which provides in part:

"Whenever a statute is repealed or amended, such repeal or amendment shall *in no manner* affect pending * * * proceedings * * * "

Our supreme court as recently as May 11, 1920, (State ex rel. Andrews, et al vs. Zangerle, Auditor) has held that the successive steps for a road improvement constitute a "proceeding" within the meaning of said section 26, and that

"Section 26 G. C. is a rule of legislative interpretation and is to be construed as a part of any amended act, unless such amendment otherwise expressly provides."

In this state of the law, I conclude that by reason of said section 26, you are at liberty to proceed under the original action of the state highway commissioner in setting aside said \$20,000 of main market road funds for the improvement in question. No question is here involved as to the authority of your department at this time to set aside the \$20,000 for use on what was formerly, but is no longer, a section of main market road; for the fact is that not only was the sum set aside in the regular course of a road improvement proceeding before the time of the removal of such section of highway from the main market system, but also more than a month before the amendment of section 1189 became effective in August, 1919.

Finding that the special circumstance above discussed presents no objection to the final resolution in question, and finding it in all respects correct, I am returning it herewith, endorsed with my approval as to form and legality in accordance with section 1218 G. C.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1258.

ELECTIONS—COMPENSATION OF JUDGES AND CLERKS OF ELECTION
WHERE SPECIAL ELECTION HELD ON SAME DAY AS PRIMARY
OR GENERAL ELECTION—SPECIAL ELECTION DEFINED.

Each judge and clerk of election shall receive the compensation provided by law for services rendered on any election day and the questions submitted to the voters on that day in no way affect such compensation so rendered. Since general elections can occur only on the first Tuesday after the first Monday of November in any year, and primary elections are another class and otherwise provided for, a special election is one called by a proper board or officer for any purpose specifically provided for by law, not within the meaning of general election, and may occur at any time except on a general election day.

COLUMBUS, OHIO, May 20, 1920.

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

GENTLEMEN:—Acknowledgment is made of your request of recent date for a written opinion on the following questions, to-wit:

"1. Where a special election is held on the same day as a primary or general election, can the precinct judges and clerks be paid two compensations for the work thus performed? See section 4944 G. C., as amended, 107 O. L. 691; also section 4990 G. C."

You are referred to opinion No. 224 of this department, found in Vol. I, page 398, 1919 Opinions of the Attorney-General, from which we quote:

"Attention is invited to section 4860 G. C., which says:

'Such judges and clerks shall each receive as compensation for their services the sum of five dollars, which services shall be the receiving, recording, canvassing and making returns of all the votes that may be delivered to them in the voting precinct in which they preside on each election day * * *'

It is clear from this section that each of the judges and clerks on duty is to receive five dollars for each election day and this amount for taking care in legal manner of all votes that may be delivered to them, that is, the whole vote cast on such election day. So the fact that on the day of the last regular election there were also votes cast in a special school election does not affect the per diem pay of such judges and clerks, for they are paid five dollars each for the election day, regardless of what was voted upon, for such compensation is for receiving, recording, canvassing and making returns of all the votes delivered to them."

The opinion above quoted discusses a special election held on the same day as a general election, that is, matters affecting a certain school district were voted upon by its electors on the day set aside for a general election. Section 4991 G. C. provides for all expenses of a primary election and says that they "shall be paid in the manner provided by law for the payment of similar expenses for general elections." The compensation of judges and clerks is one of the items of expense enumerated therein, so that had the election above spoken of been a primary election instead of a general election, the conclusion therein reached cannot be avoided. The reasoning of the opinion quoted applies alike to both general and primary elections. The fact that a greater per diem pay is allowed by law in certain places, as in registration cities, or that a different per diem pay is fixed for a general or a special election, makes for no different construction.

In section 4944 G. C., as amended 107 O. L., 691, the law is:

"No registrar, judge or clerk shall be entitled to the compensation so fixed except upon the allowance and order of the board of deputy state supervisors of election made at a joint session, certifying that each has fully performed his duty according to law as such, and stating *the number of days' service actually performed by each.* * * *"

Your second question is as follows:

"Section 4948 G. C. construes the words 'Primary,' 'November Election' and 'General Election,' but as we can find no statutory definition or construction of what a special election is, we would ask you to specifically define same."

Answering this inquiry, attention is invited to *Yeatman vs. State*, 28 O. C. A. 10, wherein the court cites many sections of the statutes, among which are sections 4829,

4840, 4941, 4944, 4948, 4967 and 4980, using the terms "regular," "general or November election," special election" and "primary election." At page 13 the court says:

"A careful consideration of all the constitutional provisions and statutes cited above compel the court to the opinion that the term 'general election' was intended to apply only to the elections held on the first Tuesday after the first Monday of November both in the even and odd numbered years, and that all other elections would be special elections except the 'primary elections' which are another class and otherwise provided for. A general election is one held throughout the state at regularly recurring intervals for the purpose of electing public officers and possibly at the same time voting upon such public questions as might be then legally submitted, while a *special election is one held at some other time to vote upon public questions or to elect officers to fill vacancies.*"

The court's opinion is that no election is a special election which occurs at the time of a general election. The opinion also defines primary elections by saying that they are another class and otherwise provided for.

It is to be observed also that, as often happens, questions are proposed to be voted upon at both general and primary elections, in the interest of economy and for other good and sufficient reasons, that could be voted upon on another day at a special election properly called according to law.

Your second question therefore is answered by saying that a special election is one called by a proper board or officer for any purpose specifically provided for by law, not within the meaning of general election, and may occur at any time except on a general election day.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1259.

MUNICIPAL CORPORATION—CITY AUDITOR EMPLOYED AS CASHIER IN WATER WORKS OR ELECTRIC LIGHT DEPARTMENT—COMPENSATION MAY BE PAID FROM FUNDS OF SAID DEPARTMENT—APPLICABLE ONLY TO CITIES UNDER CITY MANAGER PLAN.

The compensation of a city auditor who is employed as cashier in the water works or electric light department, may be paid from the funds of the department in which he is employed, such compensation being separate from and in addition to his salary as city auditor. This opinion applies only to cities operating under the city manager plan.

COLUMBUS, OHIO, May 20, 1920.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your recent request for the opinion of this department as follows:

"Referring you to house bill No. 691, passed by the recent general assembly, and to such portions amending the form of government that may be adopted in home rule cities and specifically to section 3515-24, while section 3515-28 which follows in the act provides that the city manager may receive a portion of his salary from public utility, there is no further provision as to the compensation of any one other than the city manager.