

Finally, there is submitted a contract bond upon which Grace E. Fry and Alice E. Blacker appear as personal sureties, in the penal sum of five thousand three hundred and fifty dollars, in accordance with Sections 2365-1 and 2365-2, General Code.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
GILBERT BETMAN,
Attorney General.

2842.

APPROVAL, SUPPLEMENTAL RESOLUTION FOR ROAD IMPROVEMENT
IN CUYAHOGA COUNTY, OHIO.

COLUMBUS, OHIO, January 19, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

2843.

ELECTIVE OFFICERS—DECREASE IN POPULATION OF MUNICIPALITY—
TENURE OF OFFICE WHEN MUNICIPALITY REVERTS FROM CITY
TO VILLAGE—POSITIONS OF ALL APPOINTIVE OFFICERS, CIVIL
SERVICE COMMISSION, POLICEMEN AND FIREMEN ABOLISHED
ON DAY OF CHANGE.

SYLLABUS:

1. *The elective officers of the former city of Dennison will continue to hold their offices until the village officers elected on November 3, 1931, can take office.*
2. *The positions of the members of the civil service commission, Directors of Public Service and Public Safety, policemen and firemen of the former city of Dennison were abolished by operation of law on December 31, 1930.*

COLUMBUS, OHIO, January 20, 1931.

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

GENTLEMEN:—I am in receipt of your recent inquiry which reads as follows:

“We are enclosing herewith letter received from Mr. J. R. Hill, City Solicitor of Dennison, Ohio, and are asking for your written opinion on the several questions contained in same with relation to the transmission of a municipality from a city to a village government.”

The letter enclosed, from the city solicitor, reads:

"According to the census of 1920, Dennison became a city and has been governed as such during the past ten years. According to the 1930 census the population is less than five thousand and consequently Dennison will go back to a village form of government.

As City Solicitor of Dennison we have been asked a number of times as to when the village form of government will begin. We have answered by stating that the elective offices remain the same until the election of 1931 when village officers would be elected.

We would like to inquire whether or not the Attorney General has rendered any opinions on the subject. Does the certification of the population automatically dispense with the local Civil Service Commission? What is the status of the Director of Public Service and Safety, and of the city employes under civil service, as the firemen and policemen? Can these parties be discharged by the Mayor or other appointing office, at will? If the certification does not automatically dispense with the Civil Service Commission and employes thereunder, when does said Commission cease to function, and said employes cease to have the protection of the rules governing civil service employes?

Any information that you can give us with reference to this transmission from a village to city government will be very much appreciated."

Article XVIII, Section 1, Ohio Constitution provides as follows:

"Municipal corporations are hereby classified into cities and villages. All such corporations having a population of five thousand or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law."

It is to be observed from the above constitutional provision, that the determination of whether a municipality is a city or a village, depends upon the fact of whether the population is over or below 5,000. Since the 1930 federal census, as shown by the bulletin of the Director of the Census, released on November 26, 1930, gives Dennison a population of 4,529, as compared with 5,524 by the 1920 census, it would seem that it is now to be classed as a village.

The above constitutional provision, however, has been held by the Supreme Court, in the case of *Murray v. State ex rel Nestor*, 91 O. S., 220 to be not self-executing. The court stated in said case at page 230:

"It (the above constitutional provision) indicates a basis of classification, but the time and manner of the transition of a municipal corporation from one class to the other is to be regulated by law." (Words in parenthesis, mine).

Consequently, it is necessary to see what provisions the legislature has made to govern the transition of a city to a village. The pertinent sections to be considered, are Sections 3497 to 3499, General Code. Section 3497 classifies cities and villages like the constitutional provision above quoted. Section 3498, General Code, provides for proclamation of population by the Secretary of State, and reads as follows:

"When the result of any future federal census is officially made known to the secretary of state, he forthwith shall issue a proclamation, stating the names of all municipal corporations having a population of five thousand or more, and the names of all municipal corporations having a population of less than five thousand, together with the population of all such corporations. A copy of the proclamation shall forthwith be sent to the mayor of each municipal corporation, which copy shall be forthwith transmitted to council, read therein and made a part of the records thereof. From and after thirty days after the issuance of such proclamation each municipal corporation shall be a city or village, in accordance with the provisions of this title."

It is to be noted that by the last sentence in the above section Dennison became a village thirty days after proclamation of the population by the Secretary of State. See also *Wise v. Barborton*, 20 C. C. (N. S.), 390, 391; *Murray v. State ex rel Nestor*, 91 O. S., 220, 230. However, the fact that Dennison has become a village does not mean that it shall immediately provide a complete village form of government, for Section 3499, General Code, provides as follows:

"Officers of a village advanced to a city, or of a city reduced to a village, shall continue in office until succeeded by the proper officers of the new corporation at the next regular election, and the ordinances thereof not inconsistent with the laws relating to the new corporation shall continue in force until changed or repealed."

It was held in the case of *Postna v. Lakewood*, 12 N. P. N. S., 513 at page 514 with respect to the above section, that "it is not controverted, I believe, that the word 'officers' in this section refers to elective officers."

Therefore the elective officers of the former city of Dennison will continue to hold their offices until succeeded by village officers elected "at the next regular election." I am informed that the Secretary of State issued his proclamation on December 1, 1930; therefore Dennison became a village on December 31, 1930. Now Article XVII, Section 1, Ohio Constitution provides in part that:

"* * all elections for all other elective officers (than state and county officers) shall be held on the first Tuesday after the first Monday in November in the odd numbered years."

Also, Section 4785-4, General Code, provides in part:

"General elections in the state of Ohio and its political subdivisions shall be held as follows:

* * *

(d) For municipal * * officers, * * in the odd numbered years."

Hence the next regular election for village officers will occur on November 3, 1931. At that time all elective village officers should be elected and as soon as they take office, the present officers of Dennison will be supplanted. The elective officers of Dennison at present, are the mayor, seven members of council, the solicitor, auditor and treasurer and president of council. Sections 4249, 4208, 4303, 4275, 4293 and 4272, respectively.

Coming now to the first specific question raised, it is to be noted that Section 486-19, General Code, provides in part:

“The mayor, or other chief appointing authority of *each city* in the state shall *appoint* three persons, one for a term of two years, one for four years, and one for *six years*, who shall constitute the municipal civil service commission of such city and of the city school district in which such city is located;

* *”

As the members of the civil service commission are appointed officers and as Dennison became a village on December 31, 1930, there being no provision for a civil service commission in villages, it is obvious that there existed no authority for the continuation of the said Commission in office after December 31, 1930.

As for the second specific question, it is noted that by virtue of Sections 4250, 4323 and 4367, General Code, the Directors of Public Service and Public Safety are appointive officers being selected by the mayor. Therefore it would appear that their terms of office terminated on December 31, 1930, when Dennison became a village.

As for the third question, the status of the Dennison city policemen and firemen who are in the civil service by virtue of Section 486-8(b) (1), it is apparent that their civil service appointments terminated on December 31, 1930, for the civil service laws do not apply to villages. See Section 486-8, General Code, providing that employes of the State, the several counties, cities and city school districts only shall be included in the classified service.

In my opinion No. 2257, rendered on August 23, 1930, I stated:

“It has been consistently held by numerous attorneys general that since the legislature provided that the civil service of this state shall include all offices and positions of trust or employment in the service of the state and the counties, cities and city school districts, therefore, all other political entities were excluded from the provisions of the civil service laws. See Opinions of the Attorney General, 1916, Vol. I, page 275; Opinions of the Attorney General, 1916, Vol. II, page 1186; Opinions of the Attorney General, 1918, Vol. II, page 1594; Opinions of the Attorney General, 1919, Vol. I, page 217; Opinions of the Attorney General, 1927, Vol. II, page 1006.”

Since I have concluded that there is no authority for the Directors of Public Safety or Public Service or firemen and policemen to continue after December 31, 1930, it is unnecessary to answer your fourth and fifth questions.

Summing up, I am of the opinion that:

First, the elective officers of the former city of Dennison will continue to hold their offices until the village officers elected on November 3, 1931, can take office.

Second, the positions of the members of the civil service commission, Directors of Public Service and Public Safety, policemen and firemen of the former city of Dennison were abolished by operation of law on December 31, 1930.

Respectfully,
GILBERT BETTMAN,
Attorney General.