

pleted such as is called for under present plans, very little existing city property will be available for park purposes.

On the other hand, the tentative plans for the erection of a State Office Building upon this site make it clear that there will be grounds surrounding the building much more extensive in size than any grounds which would be available for park purposes were the city to proceed alone. Of course, strictly speaking, these grounds would not be municipal park grounds, but I believe we may justifiably take notice of the fact that the grounds surrounding the present statehouse are, in effect, park grounds, available and actually made extensive use of by the citizens of Columbus. Assuming that similar conditions would exist with reference to the grounds surrounding the contemplated building, then it would seem clear that the use of the site by the State would create an incidental municipal benefit. These facts, when properly presented to a court, would in all probability bring the present situation within the rule announced by the Supreme Court in the case of *Cleveland vs. Library Board*, *supra*. However, inasmuch as under that decision it becomes a question of fact, and not one purely of law, I am unable to make my answer to your inquiry more definite than to state that, in my opinion, the facts are such as would probably appeal to the court as furnishing adequate value and justifying the conveyance by the city.

In your letter you also inquire as to the possibility of any undue delay incident to litigation arising out of the selection of the so-called river site. Every official action on the part of public officers involves the possibility of resort to the courts to test the validity of such action. It does not, however, follow that any undue delay will be occasioned thereby. I feel confident that any questions brought before the courts in matters involving substantial public interests will receive prompt and expeditious treatment.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1205.

TOWNSHIP TRUSTEE—EMPLOYED BY SURVEYOR TO WORK ON
ROAD CONSTRUCTED BY COUNTY, BUT PARTLY FINANCED BY
TOWNSHIP—LEGAL.

SYLLABUS:

A township trustee may be employed by a county surveyor on a road which is being constructed by a county, notwithstanding the township trustees are contributing to the financing of such project under the provisions of Sections 6906, et seq., of the General Code. Under such circumstances the limitations provided in Section 3294 of the General Code have no application.

COLUMBUS, OHIO, November 18, 1929.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication, which reads:

“The county surveyor has advised with me recently relative to a question that is bothering him somewhat as is set out in the following paragraphs.

The county and townships are building roads in several of the townships on the 40, 40, 20 basis—that is 40% of the costs of the road is being paid by the township, 40% by the county and 20% by the abutting land owners. In practically all of the townships the township trustees have divided the township in three parts and each one is standing responsible for the road work in one of the three parts as provided by law. The township trustees are, therefore, quite familiar with road work and have considerable experience along that line.

Under Section 3294 of the General Code every trustee is limited to \$2.50 for each day of service in the business of the township and not to exceed \$250.00 in any one year. It so happens that the county engineer, who has charge of the road construction work under the above named 40, 40, 20 plan, has employed township trustees in these particular road projects. The work is done under the direction of the county surveyor, but 40% of the money for the project is coming from the township treasury.

“The question that has been put to me by the county surveyor is whether or not a township trustee employed by the county surveyor on a project such as one above named is entitled to receive compensation on such job independent of or in addition to the maximum compensation of \$250.00 that he can secure from township for township services? In other words, does the fact that township is putting up 40% of money in such a project, make the project a township project and bring a township trustee within the provisions of Section 3294 of the General Code so far as his compensation for the labor on such project is concerned?

I might state that the situation is further complicated in one or two instances by the fact that the county road fund is practically exhausted for this year and the townships are advancing all of their share of the money at once to take care of the payrolls on some of these projects. Inasmuch as these men are working, I would appreciate your early advice on this subject. I have advised the county surveyor that it is my opinion that a trustee would come under the provision of 3294 of the General Code so far as his compensation on such project as above outlined is concerned.”

Section 3294 of the General Code, to which you refer and which relates to the compensation of township trustees, provides:

“Each trustee shall be entitled to one dollar and fifty cents 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 two dollars and fifty cents for each day of service in the business of the township, to be paid from the township treasury. The compensation of any trustee to be paid from the treasury shall not exceed two hundred and fifty dollars in any year including services in connection with the poor. Each trustee shall present an itemized statement of his account for such per diem and services, which shall be filed with the clerk of the township, and by him preserved for inspection by any persons interested.”

An examination of the section above quoted, discloses that the limitations provided therein with reference to the compensation of township trustees, refers to the compensation to be paid to such trustees from the township treasury.

In an opinion of the Attorney General found in the Opinions of the Attorney General for the year 1921, page 86, the then Attorney General had under con-

sideration Section 3294, together with other sections. The syllabus of said opinion reads:

“Under Sections 3294, 3308 and 3318, G. C. the limitation upon maximum annual compensation of the township officers therein named has reference only to services for the township as such, for which payment is made by the township out of the township treasury; and payments by individuals, for the services of such officers, do not come within such limitation.”

From your statement of facts it is assumed that the township trustees in co-operation with the county commissioners, in the construction of roads, are proceeding under the provisions of Section 6906, et seq., of the General Code.

Under the sections above mentioned, it would appear that the duty of making the construction contemplated is under the supervision and control of the county commissioners and the county surveyor, notwithstanding the township trustees have agreed to bear a portion of the expense. It would follow that any sum paid by the county surveyor in connection with the supervision of such a construction would be paid from the county treasury and not from the township treasury, and Section 3294, supra, would have no application under such circumstances.

No statutory inhibitions against such proceeding have been found. Section 12912, General Code, inhibits township trustees, as well as other officers, from doing certain things therein mentioned, but does not apply in the case you present. It is not believed that there is anything in such a proceeding which would render applicable the rule of incompatibility at common law.

It is understood that the Bureau of Inspection and Supervision of Public Offices, from an administrative standpoint, has long interpreted the law to authorize a township trustee to be employed by a county surveyor in connection with roads which are being constructed by the county.

In specific answer to your inquiry, it is my opinion that a township trustee may be employed by a county surveyor on a road which is being constructed by a county, notwithstanding the township trustees are contributing to the financing of such project under the provisions of Section 6906, et seq. of the General Code. Under such circumstances the limitations provided in Section 3294 of the General Code have no application.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1206.

ELECTION—BALLOT CAST WITH NAME WRITTEN IN BLANK SPACE
WITHOUT CROSS MARK—VALID.

SYLLABUS:

Under Section 5070, paragraphs 6 and 9, General Code, where an elector writes in the name of "A" in pencil in the proper blank space provided therefor, but fails