

1619.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN
FULTON AND LORAIN COUNTIES, OHIO.HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*

COLUMBUS, OHIO, October 15, 1920.

1620.

APPROVAL, CONTRACT BETWEEN BOARD OF TRUSTEES, BOWLING
GREEN STATE NORMAL SCHOOL AND R. J. MERRIAM, ARCHITECT,
TO REPAIR DAMAGES DONE BY STORM.

COLUMBUS, OHIO, October 15, 1920.

Board of Trustees, Bowling Green State Normal School, Bowling Green, Ohio.

DEAR SIRS:—You have transmitted to this department for approval, a contract, in triplicate, between your board and R. J. Merriam, architect, dated September 18, 1920. Said contract is for additional services made necessary by recent damage done by storm at your institution.

Having before me the certificate of the auditor of state that there are moneys available for the obligations of this contract, not otherwise appropriated, and being satisfied that said contract is in legal form, I am this day approving same.

The contract itself I am returning to the auditor of state.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1621.

BOARD OF COUNTY VISITORS—THE PHRASE “IN ANY YEAR” USED
IN SECTION 2973 G. C. CONSTRUED—ACTUAL EXPENSES IN-
CURRED NOT TO EXCEED ONE HUNDRED DOLLARS IN ANY YEAR
TO BE EXPENDED FROM MAY 1ST TO MAY 1ST OR DURING OF-
FICIAL YEAR.

1. *The phrase “in any year” used in section 2973 G. C. has reference to the year of the official term, which is fixed in section 2971 G. C. to be “three years beginning upon the first day of May” each year.*

2. *The actual expenses incurred to an amount not to exceed one hundred dollars in any year is to be expended from May 1st to May 1st or during the official year.*

COLUMBUS, OHIO, October 20, 1920.

Board of State Charities, Columbus, Ohio.

GENTLEMEN:—Receipt of your letter, which follows, is hereby acknowledged:

“An interesting question has been propounded to us by a member of

a board of county visitors which involves the interpretation of sections 2971 to 2976 of the General Code.

Section 2973 allows the expenditure of not to exceed \$100.00 *in any year* for the board of county visitors. In a certain county the commissioners hold that this year begins in May, or the time that the new appointments go into effect. The board of visitors were of the opinion that their year was governed by the dates mentioned in section 2976. While the suggestion is not made in this controversy, I have known other instances where it is held that the word "year" in section 2973 should be construed to conform to the county fiscal year which ends the last day of August.

In the county in which the present question has arisen, the commissioners are holding that the board has exceeded its legal allowance for the particular twelve months that the commissioners consider as the proper one to be included in a year, while the board of county visitors hold that they have not exceeded the amount for the twelve months which they have considered as part of the year. I was unable to reconcile the dispute to my own satisfaction and am therefore asking for a construction of your department, in order that we may have a guide to be followed in the future, as this is not the first time this question has arisen."

The law governing the board of county visitors is in sections 2971 to 2976 G. C., inclusive.

Said section 2971 G. C. says in part:

"* * * Within thirty days prior to the first day of May of each year the judge of the probate court shall appoint two persons for a term of three years beginning upon the first day of May. * * *"

The first part of this sentence ending with "each year" may be restated as "during each April," and the word "year" only serves to identify the April meant, or what thirty day period is the time to appoint. The sentence, however, fixes the term of the members as three years from the first day of each May. The official year is from May 1st to May 1st, and hence the calendar year and the official year coincide.

Section 2973 G. C. says:

"The board of county visitors shall serve without compensation, but actual expenses incurred in the discharge of its duties and actual necessary expense incurred by any member or members to be selected by such board in visiting any other charitable or correctional institution for the purpose of information, and in attendance upon any convention or meeting held within this state in the interest of and to deliberate upon charitable or correctional methods and work to an amount not to exceed one hundred dollars in any year, shall be allowed by the county commissioners. The county auditor shall issue a warrant therefor which shall be paid by the county treasurer, provided that the judge of the probate court has issued a certificate that the members of the board have satisfactorily performed their duties as provided in subsequent sections."

The phrase "in any year" in this section is important in solving our difficulty and will be more fully referred to later herein.

Section 2974 G. C., in the last sentence, says:

"Failure in the performance of these duties on the part of any member

of the board for *one year* shall be sufficient cause for his or her removal by the judge of the probate court."

Here "year" evidently refers to the official year from May 1st to May 1st, since the failure of a member to perform the duties of his office for one year is made the gage for removal for cause. These are all the direct statements of the law looking to what is meant by the phrase "in any year" found in section 2973 G. C., to which attention is now directed.

A survey of the whole living law governing a board of county visitors affords little aid to fix the legislative intent involved in your inquiry, but a review of the history of the law is enlightening on the meaning of the phrase "in any year."

The original enactment of this law, in April, 1882, provided for appointment by the presiding judge of the common pleas court, at the first autumn term of his court, on affidavit or otherwise, satisfying him that such appointment was for the public welfare. Whereupon he was directed to appoint a board of five persons, three of whom to be women, as a board of visitors to inspect the charitable institutions of the county. This board, at the close of their term of services, was to make a full report of their proceedings and file the same on or before November 1st, their term of service being for one year from the first autumn term of the common pleas court. No expense or compensation was allowed them. Here the year covered by the report is identical with the term year of the board.

Ten years later, in 1892, the number of the members of the board was increased to six and the time of appointment changed to the first spring term of the common pleas court, and the date on or before which to file their yearly report was fixed as November 15th of each year. The board still receives no expense money and no compensation. The term of office was fixed at three years, two members to be appointed each year. Here the term is made to begin in the spring while the report year is unchanged.

In March, 1898, the law was again amended to allow an amount not to exceed fifty dollars *per annum* for actual expenses incurred in the discharge of the duties of the board, the same to be paid by the county commissioners. Here is the first appearance of an expense account in the law. Evidently fifty dollars per annum refers to the term of service, which was from the first spring term of the common pleas court to the following first spring term.

The next year (1900) the law was again amended to allow the probate court in counties where there was no resident common pleas judge to appoint, between March 1st and May 1st in each year, a board of county visitors consisting of six persons.

Again, in 1906, the law was amended so that in all counties of the state the probate court became the appointing power of the board of county visitors. The term was fixed to begin on May 1st and the amount of actual expense allowed to the board was increased so as not to exceed one hundred dollars *per annum*. The time for filing the yearly report of the board was here changed to be between November 15th and December 15th of each year. This amendment of the law leaves it practically the same as now found after codification. Clearly, the expense allowed the board of one hundred per annum was intended to mean an expenditure of one hundred dollars from May 1st to May 1st, so that the phrase "in any year" as now found in the law was intended to apply to the official year of the members of the board, i. e., from May 1st to May 1st in any year.

In other opinions of this department, where a sum allowed for the maximum expense for any year is fixed, the holding has been, in the absence of any direct statement of the law, that such sum was intended to apply to the official term, and when a vacancy occurred during the term, the appointee for the residue of the term was permitted to expend not more than the unexpended remainder of the maximum

allowed for that official year. (See Opinions of the Attorney General, 1914, Vol. I, page 71; and 1915, Vol. I, page 368.)

Such a method seems to be most just and reasonable, and following that precedent and the information gained from the history of the law in this case, and in the absence of any guide, the law being silent, the question never having been, as diligent search shows, before a court of record, it is presumed that the maximum of one hundred dollars expense for any board of visitors is to be used up by the board during its official term, i. e., from May 1st to May 1st in any year.

It is the opinion of the Attorney-General that the phrase "in any year" found in section 2973 G. C. refers to the official year of the members of the board and it is so held.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1622.

INHERITANCE TAX LAW—OPINION NO. 1556, DATED SEPTEMBER 10, 1920, SUPPLEMENTAL AS TO DOWER RIGHTS AND HOMESTEAD RIGHTS FOR PURPOSE OF INHERITANCE TAX.

No account need be taken in the valuation of estates for inheritance tax purposes of the right of the widow or widower to remain in the mansion house of the deceased consort free of charge for one year, if dower is not sooner assigned, existing under section 8607 of the General Code.

In cases in which the debts of the estate are such or the liens on the real property of the decedent are such as to require the sale of such real estate in order to pay such debts or discharge such liens, the amount of the homestead assignable to the widow under such circumstances should be considered as a charge on the real estate, together with the debts and encumbrances, and the net value of the real estate, after making all such deductions, considered as the value thereof for inheritance tax purposes.

COLUMBUS, OHIO, October 20, 1920.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Receipt is acknowledged of your favor of recent date wherein you request an amplification of opinion No. 1556, dated September 10, 1920. In particular, the commission desires to be advised as to the method of treating certain statutory rights of a widow or widower (held in the opinion mentioned to be not subject to inheritance tax) in appraising or arriving at the value of the estate which is subject to the tax. The statutory rights referred to in the former opinion were described generally by the use of the term "homestead right," but, as pointed out in your request for a supplemental opinion, the nature and indeed the essential character of such rights vary with circumstances.

The general proposition laid down in the opinion referred to, to the effect that the statutory property rights conferred upon a surviving spouse in virtue of the marital right, rather than as distributee of a part of the estate of the deceased, are not subject to inheritance taxation as successions occurring "by intestate law," is abundantly supported by authority. Directly in point is *Re Kennedy*, 29 L. R. A. N. S., 428. In that case there was involved the question as to whether or not a homestead selected, designated and set apart to a widow under a statute of California providing for such homestead to be set apart absolutely to the widow, is no part of the estate of her deceased husband passing by intestate law. The principle