

Encumbrance estimate No. 1380 shows that there is sufficient money in the proper appropriation account to pay for said land. The state controlling board has given its approval to the purchase.

Enclosed please find all of the papers of which I acknowledged receipt above.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4241.

JUSTICE OF PEACE—FAILURE TO SECURE COMMISSION FROM SECRETARY OF STATE THROUGH ERROR OF BOARD OF ELECTIONS—NO VACANCY OF SUCH OFFICE.

SYLLABUS:

Vacancy in office of a justice of the peace, discussed.

COLUMBUS, OHIO, April 11, 1932.

HON. LEE D. ANDREWS, *Prosecuting Attorney, Ironton, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent request for my opinion, which reads as follows:

“At the last general election a candidate was duly elected to the office of Justice of Peace in a certain township. About the first of December he received his certificate of election but failed at this time to send to the Governor for his commission. On January 1, 1932, the Justice of Peace Elect had therefore failed to qualify and on this date the newly elected board of trustees of this township declared a vacancy in the office of Justice of Peace for the reason of failure of candidate to qualify. At this meeting another man was appointed by the trustees to fill this vacancy. Subsequent to this meeting the duly elected Justice of Peace received his commission from the Governor and took the oath of office on or about the 15th day of January and filed a bond with the board of trustees.

The trustees failed to notify the clerk of such vacancy as is required by section 1714 G. C.

The question now arises, does a vacancy occur and if so, how shall the trustees fill this vacancy?”

A subsequent communication from you discloses that the county board of elections forwarded the certificate of election to the successful candidate instead of holding the same for forwarding to the Secretary of State, as required by Section 140, General Code. I am also advised that the commission of the candidate in question, was recorded in the office of the Secretary of State, on January 11, 1932.

Section 140, *supra*, reads as follows:

“When the result of the election of any such officer is officially known to the deputy state supervisors of elections of the proper county,

and upon payment to them of the fee prescribed in the preceding section, they shall immediately forward by mail to the secretary of state a certificate of election of such officer together with the fee so paid. Upon receipt of such certificate and fee by the secretary of state, the governor shall issue and forward the proper commission to the clerk of the court of common pleas, who shall deliver the same to the officer entitled thereto. The fees so received by the secretary of state shall be paid into the state treasury to the credit of the general revenue fund."

Section 1714, General Code, provides:

"If a vacancy occurs in the office of justice of the peace by death, removal, absence for six months, resignation, refusal to serve, or otherwise, the trustees within ten days from receiving notice thereof, by a majority vote, shall appoint a qualified resident of the township to fill such vacancy, who shall serve until the next regular election for justice of the peace, and until his successor is elected and qualified. The trustees shall notify the clerk of the courts of such vacancy and the date when it occurred."

The main question presented by your inquiry is whether or not upon the failure of the successful candidate to take office on the first Monday in January, a vacancy could be declared by the township trustees.

Section 7, General Code, reads as follows:

"A person elected or appointed to an office who is required by law to give a bond or security previous to the performance of the duties imposed on him by his office, who refuses or neglects to give such bond or furnish such security, within the time and in the manner prescribed by law, and in all respects to qualify himself for the performance of such duties, shall be deemed to have refused to accept the office to which he was elected or appointed, and such office shall be considered vacant and be filled as provided by law."

Section 1720, General Code, provides:

"When a person elected justice of the peace receives a commission from the governor, he shall forthwith take and subscribe the oath of office before the clerk of the court of common pleas or before a justice of the peace of his county. Such office is authorized to administer such oath and shall file and make a record thereof in a book provided for that purpose. Such justice of the peace within ten days shall transmit such oath to the clerk of the court."

Section 1271, General Code, provides for the giving of a bond by a justice of the peace within ten days after taking the oath of office.

Since, from the circumstances disclosed, the failure of the justice of the peace in question to receive his commission from the Secretary of State was attributable to the error of the board of elections, I am of the opinion that the justice of the peace in question had not, by failing to receive his commission on the first day of his term, refused to qualify for such position or expressed in any action a refusal to perform the duties of such office, and therefore, the township trustees in question had no authority to declare a vacancy in said office.

It appears therefore that since in the instant case a commission has been

issued by the Secretary of State and all acts necessary to carry the same to fruition have been completed, no vacancy exists in the office of justice of the peace.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4242.

APPROVAL, CONTRACTS FOR ROAD IMPROVEMENTS IN LUCAS,
LAKE AND SUMMIT COUNTIES.

COLUMBUS, OHIO, April 11, 1932.

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

4243.

APPROVAL, CONTRACT FOR RENTAL OF SPACE IN THE A. I. U.
CITADELL, 50 WEST BROAD STREET, COLUMBUS, OHIO, FOR
USE OF DEPARTMENT OF FINANCE.

COLUMBUS, OHIO, April 12, 1932.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a rent contract wherein the American Insurance Union, through its agents, H. S. Gump & Company, agrees to rent space No. 2320 in the A. I. U. Citadel, 50 West Broad Street, Columbus, Ohio, to the State of Ohio, for the use and benefit of the Department of Finance (Tax Commission of Ohio), for a period of month to month, beginning February 1, 1932, and ending at such time as is agreed upon, or until the completion of the new state office building. The rental to be paid by the State is ninety five dollars (\$95.00) per month.

You have submitted encumbrance estimate No. 1, containing the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated sufficient to pay the obligations under said rent contract for the period of one month, which is believed to be sufficient under the circumstances.

A certificate is presented to show that one K. G. Mengert has authority to enter into this agreement for the American Insurance Union.

It is noted that you have not signed the contract as yet.

Finding said rent contract in proper legal form, I hereby approve same, subject to the affixing of your signature, and am returning it herewith, together with all other papers submitted.

Respectfully,

GILBERT BETTMAN,
Attorney General.